

United States
Circuit Court of Appeals⁴
For the Ninth Circuit.

HENRY RITTER,

Plaintiff in Error,

vs.

THE UNITED STATES OF AMERICA,

Defendant in Error.

Transcript of Record.

Upon Writ of Error to the United States District
Court of the District of Nevada.

FILED

APR 19 1923

F. D. WOODKOTON,

CLERK

United States
Circuit Court of Appeals
For the Ninth Circuit.

HENRY RITTER,

Plaintiff in Error,

vs.

THE UNITED STATES OF AMERICA,

Defendant in Error.

Transcript of Record.

Upon Writ of Error to the United States District
Court of the District of Nevada.

United States
Circuit Court of Appeals
For the Ninth Circuit.

HENRY RITTER,

Plaintiff in Error,

vs.

THE UNITED STATES OF AMERICA,

Defendant in Error.

Transcript of Record.

Upon Writ of Error to the United States District
Court of the District of Nevada.



INDEX TO THE PRINTED TRANSCRIPT OF RECORD.

[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in *italic*; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in *italic* the two words between which the omission seems to occur.]

	Page
Amendments Proposed by Plaintiff to Bill of	
Exceptions	48
Arraignment	15
Assignment of Errors.....	32
Bail Bond on Writ of Error.....	40
Bench Warrant	3
Bill of Exceptions	53
Bond on Writ of Error.....	44
Certificate of Clerk U. S. District Court to	
Transcript of Record	100
Citation	103
Defendant Henry Ritter's Exception to the	
Refusal of the Court to Give to the Jury	
an Instruction Requested by Said Defend-	
ant	9
Demand	5
Entry Pleas of Not Guilty	16
Indictment for Violation of the National Pro-	
hibition Act	1
Instructions of Court to the Jury.....	87
Judgment	13
Judgment Order	24

Index.	Page
Minutes of Court — May 13, 1922 — Order for Capias Issue	15
Minutes of Court — May 16, 1922 — Arraign- ment	15
Minutes of Court—May 19, 1922—Entry Pleas of Not Guilty	16
Minutes of Court—May 27, 1922—Order Set- ting Trial Date	17
Minutes of Court—June 8, 1922—Order Re Bill of Particulars	17
Minutes of Court—July 24, 1922—Order Set- ting Date of Trial.....	18
Minutes of Court—November 20, 1922—Order Setting Date of Trial.....	18
Minutes of Court—December 8, 1922—Order Setting Date of Trial.....	19
Minutes of Court—December 15, 1922—Trial..	19
Minutes of Court — December 16, 1922 — Trial (Continued)	21
Minutes of Court — January 6, 1923 — Order Continuing Time to and Including Febru- ary 15, 1923, to Prepare, Serve and File Bill of Exceptions	23
Minutes of Court—February 13, 1923—Order Continuing Time to and Including Febru- ary 19, 1923, for Passing of Sentence.....	23
Minutes of Court—February 19, 1923—Judg- ment Order	24
Minutes of Court—March 3, 1923—Order Con- tinuing Time to and Including March 5,	

Index.	Page
1923, to Prepare, Settle and File Bill of Exceptions	25
Minutes of Court—March 5, 1923—Order Con- tinuing Time to and Including March 20, 1923, to Prepare, Settle and File Bill of Exceptions	26
Minutes of Court—March 19, 1923—Order Con- tinuing Time to and Including March 24, 1923, to Prepare, Settle and File Bill of Exceptions	26
Minutes of Court—March 22, 1923—Order Con- tinuing Time to and Including March 29, 1923, to Prepare, Settle and File Bill of Exceptions	27
Minutes of Court—March 29, 1923—Order Con- tinuing Time to and Including March 30, 1923, to Prepare and File Amendments to Bill of Exceptions	27
Motion for New Trial	31
Motion in Arrest of Judgment.	28
Names and Addresses of Attorneys of Record..	1
Order Allowing Writ of Error and Admitting Defendant to Bail	39
Order Continuing Time to and Including Feb- ruary 15, 1923, to Prepare, Serve and File Bill of Exceptions.	23
Order Continuing Time to and Including Feb- ruary 19, 1923, for Passing of Sentence. . .	23
Order Continuing Time to and Including March 5, 1923, to Prepare, Settle and File Bill of Exceptions	25

Index.	Page
Order Continuing Time to and Including March 20, 1923, to Prepare, Settle and File Bill of Exceptions	26
Order Continuing Time to and Including March 24, 1923, to Prepare, Settle and File Bill of Exceptions	26
Order Continuing Time to and Including March 29, 1923, to Prepare, Settle and File Bill of Exceptions	27
Order Continuing Time to and Including March 30, 1923, to Prepare and File Amendments to Bill of Exceptions	27
Order Extending Time to and Including Feb- ruary 15, 1923, to File Bill of Exceptions..	12
Order for Capias Issue	15
Order Re Bill of Particulars	17
Order Setting Date of Trial.	18
Petition for Writ of Error and for Super- seedeas and Bail	38
Praecipe for Transcript of Record	46
Stipulation Re Settling Bill of Exceptions....	47
TESTIMONY ON BEHALF OF THE GOV- ERNMENT:	
BROWN, H. P.	68
Cross-examination	70
Redirect Examination	71
Recross-examination	71
BURRIS, R. P.	64
Cross-examination	65
Redirect Examination	66

Index.

Page

TESTIMONY ON BEHALF OF THE GOVERNMENT—Continued :

CARTER, A.	66
Cross-examination	67
DUBOIS, MR.	61
Cross-examination	62
GRIER, HARRY	62
Cross-examination	64
NASH, P.	72
Cross-examination	75
SCOTT, THOMAS	53
Cross-examination	60

TESTIMONY ON BEHALF OF DEFENDANTS:

CHURCH, D.	77
Cross-examination	80
RITTER, HENRY	82
Trial	19
Trial (Continued)	21
Verdict (D. Church)	8
Verdict (Henry Ritter)	7
Writ of Error	101

Names and Addresses of Attorneys of Record.

Messrs. BOYD & CURLER, Reno, Nevada, and
Honorable M. A. DISKIN, Carson City, Nevada,

For the Plaintiff in Error.

Honorable GEORGE SPRINGMEYER, United
States Attorney for the District of Nevada,
Reno, Nevada, and Honorable C. A. CANT-
WELL, Assistant United States Attorney for
the District of Nevada, Reno, Nevada,

For the Defendant in Error. [1*]

In the District Court of the United States, in and
for the District of Nevada.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

HENRY RITTER and D. CHURCH,

Defendants.

**Indictment for Violation of the National
Prohibition Act.**

United States of America,
District of Nevada,—ss.

Of the May Term of the District Court of the
United States of America, in and for the District
of Nevada, in the year of our Lord one thousand
nine hundred and twenty-two,—

*Page-number appearing at foot of page of original certified Transcript of Record.

The Grand Jurors of the United States of America, chosen, selected and sworn, within and for the District of Nevada, in the name and by the authority of the United States of America, upon their oaths do find and present:

That Henry Ritter and D. Church, hereinafter called the defendants, heretofore, to wit: On or about the 10th day of May, A. D. 1922, at Washoe County, State and District of Nevada, and within the jurisdiction of this Court, after the date upon which the 18th Amendment to the Constitution of the United States of America went into effect and before the finding of this indictment, in violation of Section 3, Title II, of the Act of Congress dated October 28, 1919, known as "The National Prohibition Act," did unlawfully, wilfully and knowingly have in their possession intoxicating liquor containing one-half of one per cent, or more, of alcohol by volume, fit for use for beverage purposes;

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America. [2]

And the Grand Jurors aforesaid, upon their oaths aforesaid, do further find and present:

SECOND COUNT.

That Henry Ritter and D. Church, hereinafter called the defendants, heretofore, to wit: On or about the 8th day of May, A. D. 1922, at Washoe County, State and District of Nevada, and within the jurisdiction of this Court, after the date upon which the 18th Amendment to the Constitution of the United States of America went into effect and

before the finding of this indictment, in violation of Section 3, Title II, of the Act of Congress dated October 28, 1919, known as "The National Prohibition Act," did unlawfully, wilfully and knowingly sell intoxicating liquor containing one-half of one per cent, or more of alcohol by volume, fit for use for beverage purposes;

Contrary to the form of the statute in such case made and provided and against the peace and dignity of the United States of America.

GEORGE SPRINGMEYER,

United States Attorney.

Names of witnesses examined before the Grand Jury on finding the foregoing Indictment: P. E. DuBois, Thos. Scott, P. Nash, A. Carter, Henry Ritter.

[Endorsed]: No. 5593. United States District Court, District of Nevada. The United States of America vs. Henry Ritter and D. Church. Indictment for Violation of the National Prohibition Act. A True Bill. W. P. Harrington, Foreman. Filed this 13th day of May, A. D. 1922, E. O. Patterson, Clerk. Feb. 19, Four months W. Co. jail.
[3]

Bench Warrant.

UNITED STATES OF AMERICA,

District of Nevada.

To the Marshall of the United States for the District of Nevada, and to his Deputies, and any or either of them, GREETING:

WHEREAS, at a District Court of the United

States of America, begun and held at Carson City, Nevada, within and for the district aforesaid, on the 1st day of May, 1922, the Grand Jurors in and for said district brought into said court a true bill of indictment against Henry Ritter and D. Church, charging them with the crime of having on or about May 10, 1922, at —, in the county of Washoe, District of Nevada, violated the National Prohibition Act as by said indictment now remaining on file and of record in said Court more fully appears, to which indictment the said Henry Ritter and D. Church hath not yet appeared or pleaded.

NOW, THEREFORE, YOU ARE HEREBY COMMANDED, in the name of the President of the United States, to apprehend the said Henry Ritter and D. Church and bring them before said Court in Carson City, Nevada, to answer unto said indictment May 16, 1922, or, if — requires it that you take — before the Judge of said court, or any United States Commissioner in said district, that — may give bail in the sum of — present bail sufficient to answer said indictment.

WITNESS, the Honorable E. S. FARRINGTON, Judge of said District Court, and the seal thereof hereunto affixed, at Carson City, Nevada, this 13th day of May, 1922.

[Seal]

Attest: E. O. PATTERSON,

Clerk.

By O. E. Benham,

Deputy.

GEORGE SPRINGMEYER,

U. S. Attorney. [4]

[Endorsed]: No. 5593. United States District Court, District of Nevada. The United States vs. Henry Ritter and D. Church. Bench Warrant. Filed on return this 20th day of May, 1922. E. O. Patterson, Clerk. By O. E. Benham, Deputy Clerk.

Criminal Docket No. 3422.

MARSHAL'S RETURN.

Executed the within Bench Warrant on the within named defendants at Carson City, Nevada, on the 19th day of May, 1922, and I now have them before the U. S. District Court at Carson City, Nevada, this 19th day of May, 1922.

J. H. FULMER,
U. S. Marshal.
By J. P. Fodrin,
Deputy.

In the District Court of the United States, in and
for the District of Nevada.

UNITED STATES OF AMERICA,
Plaintiff,

vs.

HENRY RITTER and D. CHURCH,
Defendants.

Demand.

To Honorable GEO. SPRINGMEYER, United
States Attorney.

To Honorable CHARLES A. CANTWELL, As-
sistant United States Attorney.

The defendants above named hereby respectfully

demand that you furnish to said defendants a bill of particulars in reference to the second count of the indictment heretofore returned against said defendants by the Grand Jury in the above-entitled court.

(1) You are respectfully requested and demand is hereby made upon you for a statement in writing setting forth the name or names of the party or parties to whom said alleged intoxicating liquors were sold by these defendants on the 8th day of May, 1922, within Washoe County.

(2) The names of the witnesses upon whose testimony you will rely to establish the facts set forth in the second count of said indictment.

(3) A brief statement of the testimony which said witness or witnesses will testify to in support of the said second count of said indictment.

(4) A statement as to whether or not said alleged sale so alleged to have been made was made by bottle or by drink.

This demand is made for the reason and upon the grounds that said second count of said indictment and the allegations [5] therein set forth are not definite, and that the recitals therein are vague and in such general terms that these defendants are not advised and cannot ascertain therefrom the particular matters which they will be required and called upon to defend concerning, and upon the further grounds that these defendants did not have a preliminary examination and were not arrested upon the date the said alleged sales took place.

It is respectfully requested that we be advised

within a reasonable time your action in reference to this demand.

Respectfully submitted,

BOYD & CURLER,

M. A. DISKIN,

Attorneys for Defendants.

Service of the above and foregoing demand is hereby acknowledged this 27th day of May, A. D. 1922.

GEORGE SPRINGMEYER,

U. S. Attorney.

[Endorsed]: 5593. In the District Court of the United States, in and for the District of Nevada. United States of America, Plaintiff, vs. Henry Ritter and D. Church, Defendants. Demand. Filed May 29, 1922, E. O. Patterson, Clerk. By O. E. Benham, Deputy. [6]

In the District Court of the United States for the District of Nevada.

No. 5593.

THE UNITED STATES

vs.

HENRY RITTER and D. CHURCH.

Verdict (Henry Ritter).

We, the jury in the above-entitled case, find the defendant Henry Ritter guilty as charged in the first count of the indictment; and guilty as charged in the second count.

Dated this 16th day of December, 1922.

H. D. JOHNS,
Foreman.

[Endorsed]: No. 5593. U. S. District Court,
District of Nevada. The United States vs. Henry
Ritter and D. Church. Verdict. Filed this 16th
day of Dec., 1922. E. O. Patterson, Clerk.

In the District Court of the United States for the
District of Nevada.

No. 5593.

THE UNITED STATES

vs.

HENRY RITTER and D. CHURCH.

Verdict (D. Church).

We, the jury in the above-entitled case, find the
defendant D. Church not guilty as charged in the
first count of the indictment; and not guilty as
charged in the second count.

Dated this 16th day of December, 1922.

H. D. JOHNS,
Foreman.

[Endorsed]: No. 5593. U. S. District Court,
District of Nevada. The United States vs. Henry
Ritter and D. Church. Verdict. Filed this 16th
day of Dec., 1922. E. O. Patterson, Clerk. [7]

In the District Court of the United States, in and
for the District of Nevada.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

HENRY RITTER and D. CHURCH,

Defendants.

**Defendant Henry Ritter's Exception to the Refusal
of the Court to Give to the Jury an Instruction
Requested by Said Defendant.**

BE IT REMEMBERED, that heretofore, to wit,
and on the 15th day of December, A. D. 1922, in the
above-entitled court, the above-entitled case, wherein
United States of America was plaintiff and Henry
Ritter and D. Church were defendants, came on for
trial before a jury upon an indictment theretofore
returned by the Grand Jury charging the defend-
ants and each of them with unlawfully in violation
of the National Prohibition Law, disposing of in-
toxicating liquors, containing more than one-half of
one per cent alcohol per volume fit for use for bev-
erage purposes, and charging the said defendants
with having in their possession the said intoxicating
liquors, and thereafter testimony was introduced on
behalf of the plaintiff, and the Government having
rested its case, testimony was introduced on behalf
of the defendants and each of them, whereupon the
Court proceeded to instruct the jury with reference
to the law applicable to said case, and that prior to
the time the Court instructed the said jury the de-

fendants presented to the Court a written instruction upon the law applicable to the use of a decoy, and that thereafter, and in the presence of the jury, and at the conclusion of instructing said jury by said Court, the defendants requested that the Court then and there give to the jury the instruction theretofore presented to the court by the said defendants, and in the presence of the [8] jury and before the jury retired to consider the same, the Court then and there refused to give to the jury defendants' proposed instruction assigning as the reason therefor that the instruction did not contain the law of this Circuit to which action of the Court in the presence of the jury and before the jury retired to consider the said case, the defendant Henry Ritter then and there excepted to the action of the Court in refusing to give the said proposed defendants' instruction, to which exception was then and there allowed by the Court, and the said instruction so refused by the Court was then and there filed with the clerk of said court, and

NOW, on this 18th day of December, A. D. 1922, and within the time allowed by law, the defendant, Henry Ritter, presents this his written exception to the failure of the Court to give to the jury the said proposed instruction, and the refusal of which the said Henry Ritter duly excepted to the said instruction so refused by the Court, to which defendant excepted, which said instruction was then and there filed with the clerk, is in words and figures as follows, to wit:

“INSTRUCTION REQUESTED BY DEFENDANT TO BE GIVEN TO THE JURY BY THE COURT:

Under the second count of the indictment the defendant Henry Ritter is charged with having on a day specified sold intoxicating liquor containing more than one-half of one per cent of alcohol per volume and fit for use for beverage purposes.

The defendant Henry Ritter claims that he was entrapped into selling the liquor through the instigation of the prohibition officers, and that the liquor would not have been sold at all, if it had not been for the importunities of the prohibition officers who went to his place for the purpose of buying liquor.

You are instructed that if you believe from the evidence, [9] that defendant was induced by the importunities of the Government agent or agents to violate the law, and that through the instigation of agent Scott or DuBois or both of them, representing the prohibition department, the defendant Ritter, was induced to sell the liquor and that defendant Ritter would not otherwise have violated the law, then you should return a verdict of not guilty, as it is the policy of the United States Courts not to uphold a conviction in any case where the offense was committed through the instigation of the Government agents.”

[Endorsed]: Filed December 16th, 1922. E. O. Patterson, Clerk.

WHEREFORE defendant, Henry Ritter, respectfully requests that this, his exception, be allowed by the Court and filed with the Clerk.

M. A. DISKIN and
JAMES T. BOYD,

Attorneys for Defendant, Henry Ritter.

Service of the within and foregoing exception admitted this 18th day of December, A. D. 1922.

GEORGE SPRINGMEYER,
United States Attorney.

[Endorsed]: No. 5593. In the District Court of the United States, in and for the District of Nevada. United States of America, Plaintiff, vs. Henry Ritter and D. Church, Defendants. Defendant's Bill of Exceptions. M. A. Diskin, and James T. Boyd, Attys. for Deft. Henry Ritter, Reno, Nevada. Filed Dec. 18, 1922. E. O. Patterson, Clerk. By O. E. Benham, Deputy. [10]

In the District Court of the United States, in and
for the District of Nevada.

UNITED STATES OF AMERICA,
Plaintiff,
vs.

HENRY RITTER and D. CHURCH,
Defendants.

**Order Extending Time to and Including February
15, 1923, to File Bill of Exceptions.**

Good cause appearing therefor, it was hereby or-

dered that the defendant, Henry Ritter, be and he is hereby given up to and including the 15th day of February, A. D. 1923, in which to prepare, serve and file his bill of exceptions in the above-entitled case.

Dated, January 8th, 1923.

E. S. FARRINGTON,
District Judge.

[Endorsed]: No. 5593. In the District Court of the United States, in and for the District of Nevada. United States of America, Plaintiff, vs. Henry Ritter and D. Church, Defendants. Order Extending Time to File, etc. Filed Jany. 8th, 1923. E. O. Patterson, Clerk. Boyd & Curler, Attys. for Deft. Henry Ritter, Reno, Nevada. [11]

In the District Court of the United States for the
District of Nevada.

February Term, 1923.

Honorable E. S. FARRINGTON, Judge.

Violation National Prohibition Act.

No. 5593.

UNITED STATES OF AMERICA

vs.

HENRY RITTER and D. CHURCH.

Judgment.

This being the time heretofore appointed for passing sentence in this case, the Court pronounced judgment as follows, addressing the defendant:

You, Henry Ritter, have been indicted by the Grand Jury, impaneled in and by this court for the crime of violating the National Prohibition Act by unlawfully, wilfully and knowingly having in your possession intoxicating liquor containing one-half of one per cent, or more, of alcohol by volume, fit for use for beverage purposes; and unlawfully, wilfully and knowingly selling intoxicating liquor; said crimes having been committed on the 8th and 10th days of May, 1922, at Washoe County, State and District of Nevada, and within the jurisdiction of this Court. You were duly arraigned upon that indictment, as required by law, and on being called upon to plead thereto you pleaded not guilty. At a subsequent day you were placed on trial, by a jury of your own selection, and by the verdict of that jury you were found guilty as charged in the indictment. The defendant was then asked if he had any legal cause to show why the judgment of the court should not now be pronounced against him. To which he replied that he had not.

In consideration of the law and the premises, it is hereby ordered and adjudged that you be imprisoned in the county jail of Washoe County, Nevada, for the period of Four (4) months from and after this date.

Dated and entered Feb. 19, 1923.

Attest: E. O. PATTERSON,

Clerk.

By O. E. Benham,

Deputy. [12]

Indictment for Violation of National Prohibition
Act.

No. 5593.

THE UNITED STATES

vs.

HENRY RITTER and D. CHURCH.

**Minutes of Court—May 13, 1922—Order for Capias
Issue.**

The Grand Jury impaneled in and by this Court having this day presented a true bill of indictment in this case, IT IS ORDERED that a capias issue herein returnable Tuesday, May 16th, 1922, at ten o'clock A. M., and IT IS FURTHER ORDERED that the present bond of the said defendants be, and the same are hereby, considered sufficient and may remain the same.

Indictment for Violation of National Prohibition
Act.

No. 5593.

THE UNITED STATES

vs.

HENRY RITTER and D. CHURCH.

Minutes of Court—May 16, 1922—Arraignment.

These defendants appeared this day with their attorney, Mr. James T. Boyd, and were thereupon duly arraigned upon the said indictment as re-

quired by law. They each declared their true name to be as stated in the indictment. Upon motion of Mr. Boyd, IT IS ORDERED that these defendants be, and they are hereby, granted to and until Friday, May 19, 1922, at ten o'clock A. M. within which to enter their pleas. [13]

Indictment for Violation of National Prohibition
Act.

No. 5593.

THE UNITED STATES

vs.

HENRY RITTER and D. CHURCH.

**Minutes of Court—May 19, 1922—Entry Pleas of
Not Guilty.**

These defendants appeared this day with their attorney, Mr. James T. Boyd, and were thereupon duly arraigned upon the said indictment as required by law. They each declared their true name to be as stated in the indictment and each entered their plea of not guilty as charged in the indictment. Upon motion of Mr. C. A. Cantwell, Assistant United States Attorney, IT IS ORDERED that the bond of each of these defendants be, and the same is hereby raised to and fixed at Fifteen Hundred (\$1,500.00) Dollars.

Indictment for Violation of National Prohibition
Act.

No. 5593.

THE UNITED STATES

vs.

HENRY RITTER and D. CHURCH.

**Minutes of Court—May 27, 1922—Order Setting
Trial Date.**

Upon motion of Mr. C. A. Cantwell, Assistant
United States Attorney, IT IS ORDERED that
this case be, and the same is hereby, set down for
trial on July 29, 1922, at ten o'clock A. M. [14]

Indictment for Violation of National Prohibition
Act.

No. 5593.

THE UNITED STATES

vs.

HENRY RITTER and D. CHURCH.

**Minutes of Court—June 8, 1922—Order Re Bill
of Particulars.**

IT IS ORDERED that the Government will comply with the demand for a bill of particulars in as far as the first and second paragraphs thereof are concerned; but the third and fourth requests are denied.

Indictment for Violation of National Prohibition
Act.

No. 5593.

THE UNITED STATES

vs.

HENRY RITTER and D. CHURCH.

**Minutes of Court—July 24, 1922—Order Setting
Date of Trial.**

Upon motion of Mr. C. A. Cantwell, Assistant United States Attorney, IT IS ORDERED that this case be, and the same is hereby, set down for trial on September 11, 1922, to follow case No. 5568.

Indictment for Violation of National Prohibition
Act.

No. 5593.

THE UNITED STATES

vs.

HENRY RITTER and D. CHURCH.

**Minutes of Court—November 20, 1922—Order Set-
ting Date of Trial.**

Upon motion of Mr. C. A. Cantwell, Assistant United States Attorney, IT IS ORDERED that this case be, and the same is hereby, set down for trial on November 12, 1922, to follow case No. 5656.

Indictment for Violation of National Prohibition
Act.

No. 5593.

THE UNITED STATES

vs.

HENRY RITTER and D. CHURCH.

**Minutes of Court—December 8, 1922—Order Set-
ting Date of Trial.**

Upon motion of Mr. George Springmeyer, United States Attorney, IT IS ORDERED that this case be, and the same is hereby, set down for trial on December 14, 1922, at ten o'clock A. M.

Indictment for Violation of National Prohibition
Act.

No. 5593.

THE UNITED STATES

vs.

HENRY RITTER and D. CHURCH.

Minutes of Court—December 15, 1922—Trial.

This cause coming on regularly for trial this day, Mr. George Springmeyer, United States Attorney appeared for and on behalf of the plaintiff; Messrs. J. T. Boyd and M. A. Diskin for the defendants,—the defendants being personally present. The following named jurors were accepted by the parties and duly sworn to try the issue, viz.: Henry D.

Johns, Floyd L. Booe, Fred Andresen, Chas. Wm. Jacobsen, M. Jacobsen, Fred Henrichs, Wyman Evans, Howard Sullivan, Fred Allerman, H. Rabe, J. H. Hoopes and R. Fulstone. The indictment was read to the jury by the clerk and the pleas of the defendants was stated. Upon motion of Mr. Diskin all witnesses were marshalled, sworn and placed under the rule, to wit: P. Nash, Thomas Scott, P. E. DuBois, H. P. Brown, A. Carter, Harry Grier and R. Burris, for the plaintiff; and H. H. Kennedy, R. Kirman, Harry Gosse, T. J. Steinmetz, A. H. Howe for defendants. These witnesses were admonished by the Court and excluded from the courtroom. All [16] of the witnesses for plaintiff were called in turn and in addition thereto Mr. Ira L. Swearingen was also sworn and during this testimony plaintiff offered in evidence one quart bottle one-half full of red liquor, admitted and ordered marked Plffs. Ex. No. 1; one small individual bottle about half full of red liquor, admitted and ordered marked Plffs. Ex. No. 2; two one-gallon demijohns full of red liquor, admitted and ordered marked Plffs. Ex. No. 3. Stipulation by counsel that all the liquor here offered in evidence in these exhibits is corn whisky containing over 45% alcohol by volume and is fit for use as a beverage. Plaintiff rests. All of defendants' witnesses were called in turn and in addition thereto Dr. H. E. Reid was sworn and testified. At 4:30 o'clock P. M. the jury was admonished by the Court not to talk among themselves about this case nor to allow others to talk to them or in their presence about

it and to refrain from making up their minds as to what their verdict would be until the case is finally submitted to them, etc., and they were excused until to-morrow morning at ten o'clock.

Indictment for Violation of National Prohibition
Act.

No. 5593.

THE UNITED STATES

vs.

HENRY RITTER and D. CHURCH.

Minutes of Court—December 16, 1922—Trial (Continued).

This case coming on regularly for further trial this day, the same counsel, the defendants and the jury being present. The defendants D. Church and Henry Ritter were each duly sworn and testified in turn on behalf of the defendants. Defendants rest. No [17] further testimony being adduced, and after argument by counsel for the respective parties the case was submitted. Thereupon, and after hearing the instructions given by the Court, the jury retired in charge of the Marshal to deliberate on the case and at 3:08 P. M. came into Court with the following verdict, viz.: "In the District Court of the United States for the District of Nevada. The United States vs. Henry Ritter and D. Church. No. 5593. We, the Jury in the above-entitled case, find the defendant, Henry Ritter, Guilty

as charged in the first count of the indictment; and guilty as charged in the second count. Dated this 16th day of December, 1922, H. D. Johns, Foreman.” “In the District Court of the United States for the District of Nevada. The United States vs. Henry Ritter and D. Church. No. 5593. We, the jury in the above-entitled case, find the defendant D. Church, not guilty as charged in the first count of the indictment; and not guilty as charged in the second count. Dated this 16th day of December, 1922. H. D. Johns, Foreman,”—and so they all say.

IT IS ORDERED that the defendant D. Church be, and he is hereby, discharged and his bond fully exonerated. IT IS FURTHER ORDERED upon motion of Mr. Diskin that the time for passing sentence upon the defendant, Henry Ritter be, and the same is hereby set for January 8th, 1923, at ten o'clock A. M. Mr. Diskin gives notice of his intention to move for a new trial and losing that he will appeal. IT IS ORDERED that the defendant's bond on appeal and to act as supersedeas be, and the same is fixed at Five Thousand Dollars (\$5,000.00). [18]

Indictment for Violation of National Prohibition
Act.

No. 5593.

THE UNITED STATES

vs.

HENRY RITTER and D. CHURCH.

Minutes of Court — January 6, 1923 — Order Continuing Time to and Including February 15, 1923, to Prepare, Serve and File Bill of Exceptions.

Good cause appearing therefor, it was hereby ordered that the defendant, Henry Ritter, be and he is hereby given up to and including the 15th day of February, A. D. 1923, in which to prepare, serve and file his bill of exceptions in the above-entitled case.

Indictment for Violation of National Prohibition Act.

No. 5593.

THE UNITED STATES

vs.

HENRY RITTER and D. CHURCH.

Minutes of Court—February 13, 1923—Order Continuing Time to and Including February 19, 1923, for Passing of Sentence.

Upon motion of Mr. George Springmeyer, United States Attorney, IT IS ORDERED that the time for passing sentence upon the defendant Henry Ritter be, and the same is hereby, continued to and until February 19, 1923, at ten o'clock A. M. [19]

Indictment for Violation of National Prohibition
Act.

No. 5593.

THE UNITED STATES

vs.

HENRY RITTER and D. CHURCH.

**Minutes of Court—February 19, 1923—Judgment
Order.**

This defendant, H. Ritter, appeared this day with his attorney, Mr. James D. Boyd, who presented a motion in arrest of judgment; Mr. George Springmeyer, United States Attorney appeared for plaintiff and opposed to the motion. Upon the conclusion of the argument by counsel for the respective parties, the motion was submitted to and by the Court ORDERED denied. Thereupon Mr. Boyd presented his motion for a new trial which was also argued by counsel for the respective parties, submitted to and by the Court denied. Thereupon, and this being the time heretofore appointed for passing sentence upon the said defendant, the Court pronounced judgment as follows, addressing the defendant: In consideration of the law and the premises, IT IS HEREBY ORDERED AND ADJUDGED that you be imprisoned in the county jail of Washoe County, Nevada, for the period of four months from and after this date. IT IS FURTHER ORDERED that the bond of this defendant be, and the same is hereby, fixed at Four Thousand

(\$4,000.00) Dollars and the same to act as a supersedeas bond. Upon the petition filed herein IT IS ORDERED that defendant be, and he is hereby allowed a writ of error. And IT IS FURTHER ORDERED that the defendant may have to and until March 1, 1923, within which to file his settled bill of exceptions herein. [20]

Indictment for Violation of National Prohibition Act.

No. 5593.

THE UNITED STATES

vs.

HENRY RITTER and D. CHURCH.

Minutes of Court—March 3, 1923—Order Continuing Time to and Including March 5, 1923, to Prepare, Settle and File Bill of Exceptions.

Upon motion of Mr. George Springmeyer, United States Attorney, IT IS ORDERED that defendant have to and until March 5, 1923, to prepare, settle and file his bill of exception.

Indictment for Violation of National Prohibition Act.

No. 5593.

THE UNITED STATES

vs.

HENRY RITTER and D. CHURCH.

Minutes of Court—March 5, 1923—Order Continuing Time to and Including March 20, 1923, to Prepare, Settle and File Bill of Exceptions.

Upon motion of Mr. George Springmeyer, United States Attorney, IT IS ORDERED that defendant have to and until March 20, 1923, to prepare, settle and file his bill of exception.

Indictment for Violation of National Prohibition Act.

No. 5593.

THE UNITED STATES

vs.

HENRY RITTER and D. CHURCH.

Minutes of Court—March 19, 1923—Order Continuing Time to and Including March 24, 1923, to Prepare, Settle and File Bill of Exceptions.

Upon motion of Mr. George Springmeyer, United States Attorney, IT IS ORDERED that defendant have to and until March 24, 1923, to prepare, settle and file his bill of exception. AND IT IS FURTHER ORDERED that defendant be, and he is hereby, allowed to and until April 19th within which to file his record on appeal in the United States Circuit Court of Appeals for the Ninth Circuit. [21]

Indictment for Violation of National Prohibition
Act.

No. 5593.

THE UNITED STATES

vs.

HENRY RITTER and D. CHURCH.

Minutes of Court—March 22, 1923—Order Continuing Time to and Including March 29, 1923, to Prepare, Settle and File Bill of Exceptions.

Upon motion of Mr. James D. Boyd, attorney for defendant, consent thereto being given by Mr. George Springmeyer, United States Attorney, IT IS ORDERED that defendant have to and until March 29, 1923, to prepare, settle and file his bill of exception.

Indictment for Violation of National Prohibition
Act.

No. 5593.

THE UNITED STATES

vs.

HENRY RITTER and D. CHURCH.

Minutes of Court—March 29, 1923—Order Continuing Time to and Including March 30, 1923, to Prepare and File Amendments to Bill of Exceptions.

Upon motion of Mr. George Springmeyer, United States Attorney, consent thereto being given by

Mr. James D. Boyd, attorney for defendant, IT IS ORDERED that plaintiff have to and until March 30, 1923, within which to prepare and file his amendments to the bill of exception and to settle bill of exception to be filed upon that day. [22]

In the District Court of the United States, in and
for the District of Nevada.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

HENRY RITTER and D. CHURCH,

Defendants.

Motion in Arrest of Judgment.

Now comes Henry Ritter, one of the defendants in the above-styled cause against whom a verdict of guilty was rendered in said cause on the 16th day of December, A. D. 1922, and, before judgment is pronounced upon him, moves the Court to arrest the judgment against him and hold for naught the verdict of guilty rendered against him for the following reasons:

I.

Because the bill of indictment in this cause, and the first count of said indictment, wherein defendant is sought to be charged with unlawful possession of intoxicating liquor, is insufficient to support any judgment against him in this, to wit:

The indictment does not recite facts on said first count sufficient to constitute a public offense

for the reason that possession is charged in Washoe County, Nevada, no place therein being designated and no averments or allegations are contained in said indictment which negatives the assumptions of fact, that said liquor charged to be in the possession of defendant may have been possessed by him in his private dwelling; the allegation in said indictment that said possession was unlawful and in violation of the prohibition law is the statement of a conclusion.

II.

Because the bill of indictment under the second count is insufficient to support any judgment against defendant in this, to wit: [23]

Said second count attempts to charge an alleged sale of intoxicating liquor in that defendant in violation of law did unlawfully sell intoxicating liquor fit for use as a beverage; the said allegations are insufficient in that there is no allegation or statement that said liquor so alleged to have been sold, was sold with the knowledge on the part of the seller (the defendant); that it was to be used for beverage purposes; or that the liquor so sold was used for beverage purposes.

In support of these two counts, the Court is respectfully referred to the testimony given in the case and the objections interposed by defendant at the outset of the trial, wherein counsel for defendant objected to the introduction of any evidence to support the allegations of the indictment, for the reason that the indictment failed to state facts sufficient to constitute a public offense and,

therefore, all testimony in support of the indictment was irrelevant, incompetent and immaterial.

III.

That the evidence introduced establishes that the defendant, Ritter, had been entrapped by prohibition officers into the commission of the alleged crime charged in the second count of the indictment, and under which the jury found the defendant guilty.

The defendant, Henry Ritter, therefore prays that this motion be sustained and that the judgment of conviction against him be arrested and held for naught, and that he have all such other orders as may be just or proper in the premises.

Dated February 15th, A. D. 1923.

BOYD & CURLER,
Per JAMES T. BOYD,
Attorneys for Defendant.

[Endorsed]: In the District Court of the United States, in and for the District of Nevada. United States of America, Plaintiff, vs. Henry Ritter and D. Church, Defendants. Motion in Arrest of Judgment. Filed Feb. 19, 1923. E. O. Patterson, Clerk. Boyd & Curler, Attorneys for Henry Ritter, Reno, Nevada. [24]

In the District Court of the United States, in and
for the District of Nevada.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

HENRY RITTER and D. CHURCH,

Defendants.

Motion for New Trial.

Comes now Henry Ritter, one of the defendants above named, and moves the Court that a new trial be granted for the following reasons and on the following grounds, to wit:

I.

That the Court erred in its decision upon questions of law arising during the course of the trial.

II.

That the Court erred in refusing to give to the jury the instruction requested by the defendant in reference to the use of a decoy.

III.

That the verdict of the jury is contrary to law.

IV.

That under the testimony admitted to sustain the second count of the indictment the verdict be set aside for the reason that the defendant, Ritter, was entrapped and persuaded by Government agents to commit the act which the jury found him guilty.

V.

That the verdict of the jury is contrary to the evidence.

BOYD & CURLER,
Per JAMES T. BOYD,
Attorneys for Defendant.

[Endorsed]: In the District Court of the United States, in and for the District of Nevada. United States of America, Plaintiff, vs. Henry Ritter and D. Church. Motion for New Trial. Filed Feb. 19, 1923. E. O. Patterson, Clerk. Boyd & Curler, Attorneys for Henry Ritter, Reno, Nevada. [25]

In the District Court of the United States, in and
for the District of Nevada.

UNITED STATES OF AMERICA,
Plaintiff,
vs.
HENRY RITTER and D. CHURCH,
Defendants.

Assignment of Errors.

And now comes Henry Ritter, the plaintiff in error, and in connection with his petition for a writ of error says that in the record, proceedings and judgment aforesaid, error has intervened to his prejudice, to wit:

I.

The Honorable E. S. Farrington, Judge of the District Court of the United States, as aforesaid,

erred over the objection and exception of the defendant in admitting the following evidence testified by Thomas Scott, a witness, upon the part of defendant in error, which is as follows:

“Q. Now what occurred when you drank this corn whiskey, as you call it?

“A. I retained the bottle, which was full with the exception of three or four glasses that had been taken out of it, and I walked over to Mr. Ritter, took a warrant from my pocket, handed him a copy of it; he was leaning against the end of the bar, and I informed him I was a Federal agent, and the house was in the custody of the Government. I then stepped to the door where Mr. DuBois was, and requested Mr. DuBois to call the rest of the men; in the meantime I turned to Mr. Burris, Mr. Grier and the other gentleman and I told them, gentlemen, you are at liberty to leave if you wish, but if you wait until the rest of the boys come I don't know what action they will take; so they left. Agent Nash [26] came along first, the other three agents following him; I handed the bottle to Mr. Nash, also the original search-warrant, and informed Mr. Nash that Mr. Church had sold the drinks.

Mr. DISKIN.—We object.

Mr. SPRINGMEYER.—(Q.) Was this in the presence of Mr. Church and Mr. Ritter?

A. They were in the same room.

Q. Did they hear?

A. They could not very well not have heard it.

Q. What language did you use?

Mr. BOYD.—We object to what language he used. You can't define the crime by the language used by this witness after the commission of the offense, it is merely descriptive of what has transpired.

The COURT.—Have you any authority that a statement made in the presence of the defendants is inadmissible for that reason?

Mr. BOYD.—No, sir; it is a general proposition.

The COURT.—I know of no authority. A statement made with reference to the commission of an offense in the presence of the defendant has always been admissible in this court. If there is a rule to the contrary I would like to see it.

Mr. BOYD.—I haven't those at my fingertips, but we make the objections just the same.

The COURT.—You should always anticipate the Court is ignorant on matters of that kind, and needs instruction. The objection will be overruled.

Mr. BOYD.—Exception.

Mr. SPRINGMEYER.—(Q.) Please answer the question.

A. When Mr. Nash came in the door I handed him the bottle and warrant, with the remark, 'Here is the bottle and the warrant, Mr. Church served the liquor, Mr. Ritter got

the bottle just outside of the door, he was only gone a moment'; I then left the premises."
[27]

II.

The Court erred in not charging the jury as requested by defendant as follows:

"Under the second count of the indictment the defendant Ritter is charged with having on a day specified sold intoxicating liquor containing more than one-half of one per cent of alcohol per volume and fit for use for beverage purposes.

"The defendant Ritter claims that he was entrapped into selling the liquor through the instigation of the prohibition officers, and that the liquor would not have been sold at all if it had not been for the importunities of the prohibition officers who went to his place for the purpose of buying liquor.

"You are instructed that if you believe from the evidence, that defendant was induced by the importunities of the Government agent or agents to violate the law, and that through the instigation of agent Scott or DuBois, or both of them, representing the prohibition department, the defendant Ritter, was induced to sell liquor, and that defendant Ritter would not otherwise have violated the law, then you should return a verdict of not guilty, as it is the policy of the United States Courts not to uphold a conviction in any case where the offense was committed through the instigation of the Government agents."

In connection with this assignment of errors, it will be remembered that no evidence was introduced on behalf of defendant in error which to any degree established justification for the use of a decoy, and, further, the plaintiff in error admitted delivering the liquor and his only defense was the persuasion used by the prohibition officer in inducing him to deliver the liquor; and further that the only reason assigned by the Court for his refusal to give said instruction was that it was not the law in this circuit. [28]

III.

The verdict of the jury as to the second count of the indictment was based upon evidence establishing that the act of defendant in delivering liquor to the prohibition agents was not a voluntary act on the part of plaintiff in error but was induced by the persuasion of the prohibition officer.

IV.

That the alleged crime set forth in the second count in the indictment, as shown by the testimony, originated in the minds of the prohibition agents and the verdict of the jury on said second count of guilty, is against public policy.

V.

That the verdict of the jury on the second count of the indictment is not supported by competent evidence and the same is against public policy.

VI.

The Court erred in overruling and denying the motion of defendant in arrest of judgment.

In connection with this assignment it will be

remembered that plaintiff in error, at the inception of the case of defendant in error and at the time the first witness was sworn, objected to the introduction of any evidence upon the ground that the indictment failed to state facts sufficient to constitute a public offense.

VII.

The Court erred in denying the motion for a new trial.

VIII.

The Court erred in entering the judgment against plaintiff in error upon the verdict in the case.

IX.

The judgment of the Court is contrary to law.
[29]

WHEREFORE said plaintiff in error prays that the judgment of the District Court of the United States, for the District of Nevada, may be reversed and held for naught.

Respectfully submitted,

BOYD & CURLER,

Per JAMES T. BOYD,

Attorneys for Plaintiff in Error.

[Endorsed]: No. 5593. In the District Court of the United States, in and for the District of Nevada. United States of America, Plaintiff, vs. Henry Ritter and D. Church, Defendants. Assignment of Errors. Filed Feb. 19, 1923. E. O. Patterson, Clerk. Boyd & Curler, Attorneys for Henry Ritter, Reno, Nevada. [30]

In the District Court of the United States, in and
for the District of Nevada.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

HENRY RITTER and D. CHURCH,

Defendants.

**Petition for Writ of Error and for Supersedeas
and Bail.**

To the Honorable E. S. FARRINGTON, Judge of
the District Court of the United States, for the
District of Nevada.

And now comes Henry Ritter, one of the defendants in the above-entitled cause, and feeling himself aggrieved by the verdict of the jury and the judgment of the District Court of the United States, for the District of Nevada, entered on the 16th day of December, 1922, hereby petitions for an order allowing him, said defendant, to prosecute a writ of error from the United States Circuit Court of Appeals for the Ninth Circuit to the District Court of the United States, for the District of Nevada; that said writ of error may be made a supersedeas, and that your petitioner be released on bail in an amount to be fixed by the Judge thereof, pending the final disposition of said writ of error. Assignment of errors is filed with this petition.

HENRY RITTER,

By JAMES T. BOYD,

His Attorney.

[Endorsed]: No. 5593. In the District Court of the United States, in and for the District of Nevada. United States of America, Plaintiff, vs. Henry Ritter and D. Church, Defendants. Petition for Writ of Error and for Supersedeas and Bail. Filed Feb. 19, 1923. E. O. Patterson, Clerk. Boyd & Curler, Attorneys for Henry Ritter, Reno, Nevada. [31]

In the District Court of the United States, in and
for the District of Nevada.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

HENRY RITTER and D. CHURCH,

Defendants.

Order Allowing Writ of Error and Admitting Defendant to Bail.

That a writ of error issue from the United States Circuit Court of Appeals for the Ninth Circuit to the United States *District for* the District of Nevada, as prayed for in the petition of the said Henry Ritter; and that a citation be issued to the defendant in error.

And, it now appearing that a citation has been served in the cause, it is now ORDERED that the writ of error, allowed as above stated, operate as a supersedeas, and the defendant be admitted to bail, upon furnishing a bond in the penal sum of

Four Thousand Dollars (\$4000.00), conditioned according to law to be approved by me.

Dated February 19th, 1923.

E. S. FARRINGTON,
Judge.

[Endorsed]: No. 5593. In the District Court of the United States, in and for the District of Nevada. United States of America, Plaintiff, vs. Henry Ritter and D. Church, Defendants. Order Allowing Writ of Error and Admitting Defendant to Bail. Filed Feb. 19, 1923. E. O. Patterson, Clerk. Boyd & Curler, Attorneys for Henry Ritter, Reno, Nevada. [32]

In the District Court of the United States, in and
for the District of Nevada.

UNITED STATES OF AMERICA,
Plaintiff,
vs.

HENRY RITTER and D. CHURCH,
Defendants.

Bail Bond on Writ of Error.

KNOW ALL MEN BY THESE PRESENTS:
That I, Henry Ritter, of the County of Washoe, State of Nevada, as principal, and S. M. Pickett, of the County of Washoe, State of Nevada, and A. G. Fletcher, of the County of Washoe, State of Nevada, as sureties, are held and firmly bound unto the United States of America, in the full and just

sum of Four Thousand Dollars (\$4,000.00), to be paid to the United States of America, to which payment well and truly made we bind ourselves, our heirs, executors and administrators, jointly and severally by these presents.

Sealed with our seals and dated this 20th day of February, in the year of our Lord one thousand nine hundred and twenty-three.

WHEREAS, lately on the 19th day of February, A. D. 1922, at the February Term of the District Court of the United States for the District of Nevada, in a cause pending in said court between the United States of America, plaintiff, and Henry Ritter and D. Church, defendants, a judgment and sentence was rendered against said Henry Ritter and said Henry Ritter obtained a writ of error from the United States Circuit Court of Appeals for the Ninth Circuit to the said United States District Court for the District of Nevada, to reverse the judgment and sentence in the aforesaid case, and a citation directed to the United States of [33] America, citing and admonishing the United States of America to be and appear in the said court thirty days from and after the date thereof, which citation has been fully served.

Now, the condition of said obligation is such, that if the said Henry Ritter shall prosecute said writ of error to effect, and shall appear in person in the United States Circuit Court of Appeals for the Ninth Circuit, when said cause is reached for argument or when required by law or rule of said court, and from day to day thereafter in said Court until

such cause shall be finally disposed of, and shall abide by and obey the judgment and all orders made by the said Court of Appeals, in said cause, and shall surrender himself in execution of the judgment and sentence appealed from, as said Court may direct, if the judgment and sentence against him shall be affirmed, and if he shall appear for trial in the District Court of the United States for the District of Nevada, on such day or days as may be appointed for a retrial by said District Court, and abide by and obey all orders of said Court, provided the judgment and sentence against him shall be reversed by the United States Circuit Court of Appeals, then the above obligation to be void; otherwise to remain in full force, virtue and effect.

HENRY RITTER,
Principal. (Seal)
S. M. PICKETT,
Surety. (Seal)
A. G. FLETCHER,
Surety. (Seal)

Approved as to form and sureties Feb. 21, 1923.

GEORGE SPRINGMEYER,
U. S. Attorney. [34]

State of Nevada,
County of Washoe,—ss.

S. M. Pickett and A. G. Fletcher, sureties on the annexed foregoing undertaking, being first duly sworn, each for himself and not one for the other, deposes and says: That he is a resident and freeholder within the County of Washoe, State of Ne-

vada; and that he is worth the sum of Four Thousand Dollars (\$4,000) over and above all his just debts and liabilities, in property not exempt from execution.

S. M. PICKETT.

A. G. FLETCHER.

Subscribed and sworn to before me this 20th day of February, A. D. 1922.

[Seal]

ANNA M. WARREN,

United States Commissioner for the District of Nevada.

[Endorsed]: No. 5593. In the District Court of the United States, in and for the District of Nevada. United States of America, Plaintiff, vs. Henry Ritter and D. Church, Defendants. Bail Bond on Writ of Error. The within undertaking is hereby approved. E. S. Farrington, U. S. Dist. Judge. Filed Feb. 23, 1923. E. O. Patterson, Clerk. Boyd & Curler, Attorneys for Henry Ritter, Reno, Nevada. [35]

In the District Court of the United States, in and
for the District of Nevada.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

HENRY RITTER and D. CHURCH,

Defendants.

Bond on Writ of Error.

WHEREAS the defendant, Henry Ritter, in the above-entitled action has sued out a writ of error through the United States Circuit Court of Appeals for the Ninth Circuit to the said United States District Court for the District of Nevada, from a judgment made and entered against him in said above-entitled cause in said United States District Court for the District of Nevada on the 19th day of February, A. D. 1923, or thereabouts; and

WHEREAS, the said defendant, Henry Ritter, by an order of court heretofore duly made and entered is required to enter into a bond in the sum of Five Hundred Dollars (\$500.00) to guarantee the payment of all costs in said cause.

NOW, THEREFORE, in consideration of the premises and of the suing out of said writ of error to the said Court of Appeals for the Ninth District of the United States, we, the undersigned, residents of the County of Washoe, State of Nevada, do hereby jointly and severally undertake and promise on the part of the said Henry Ritter that the said person will pay all damages and costs which may be awarded against him on account of the said writ of error or on the dismissal thereof, not exceeding the sum of Five Hundred Dollars (\$500.00) in which amount we acknowledge ourselves jointly and severally bound.

WITNESS our signature this 20th day of February, A. D. 1923.

HENRY RITTER.

S. M. PICKETT.

A. G. FLETCHER.

[36]

State of Nevada,
County of Washoe,—ss.

S. M. Pickett and A. G. Fletcher, each for himself and not one for the other, being first duly sworn, deposes and says: That he is a resident and householder of the County of Washoe, State of Nevada, and is the same identical person who signed the above and foregoing bond and undertaking; and that he is worth the sum of Five Hundred Dollars (\$500.00) over and above all indebtedness and in property subject to execution.

S. M. PICKETT.

A. G. FLETCHER.

Subscribed and sworn to before me this 20th day of February, A. D. 1923.

[Seal]

ANNA M. WARREN,

Notary Public in and for Washoe County, State of Nevada.

My commission expires March 4, 1925.

Approved as to form and sureties Feb. 21, 1923.

GEORGE SPRINGMEYER,

U. S. Attorney.

[Endorsed]: No. 5593. In the District Court of the United States, in and for the District of Nevada. United States of America, Plaintiff, vs. Henry

Ritter and D. Church, Defendants. Bond on Writ of Error. The within undertaking is approved Feb. 23, 1923. E. S. Farrington, U. S. Dist. Judge. Filed Feb. 23, 1923. E. O. Patterson, Clerk. Boyd & Curler, Attorneys for Henry Ritter. [37]

In the District Court of the United States, in and
for the District of Nevada.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

HENRY RITTER and D. CHURCH,

Defendants.

Praeipie for Transcript of Record.

To the Clerk of the Above-entitled Court:

You will please prepare transcript of the record in this cause, to be filed in the office of the clerk of the United States Circuit Court of Appeals for the 9th Circuit, and include in said transcript the following pleadings, proceedings, and papers on file, to wit:

Indictment.

Verdict.

Motion for new trial.

Motion in arrest of judgment.

Judgment or sentence.

Petition for writ of error.

Assignment of errors.

Bill of exceptions.

Writ of error.

Order allowing writ of error.

Citation to writ of error.

Supersedeas bond.

Cost bond.

All minutes of court.

BOYD & CURLER,
Attorneys for Defendant.

[Endorsed]: No. 5593. In the District Court of the United States for the District of Nevada. The United States vs. Henry Ritter and D. Church. Praecipe. Filed March 24, 1923. E. O. Patterson, Clerk. By O. E. Benham, Deputy. [38]

In the District Court of the United States of America, in and for the District of Nevada.

#5593.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

HENRY RITTER and D. CHURCH,

Defendants.

Stipulation Re Settling Bill of Exceptions.

IT IS HEREBY STIPULATED AND AGREED, that the proposed bill of exceptions submitted by the defendant Henry Ritter, and the proposed amendments to bill of exceptions proposed by

the plaintiff, are true and correct, and may be settled by the Court as such.

GEORGE SPRINGMEYER,

United States Attorney.

BOYD & CURLER,

Attorneys for Defendants.

Dated: March 31, 1923.

[Endorsed]: No. 5593. In the District Court of the United States for the District of Nevada. United States of America, Plaintiff, vs. Henry Ritter and D. Church, Defendants. Stipulation Filed March 31st, 1923. E. O. Patterson, Clerk. [39]

In the District Court of the United States of America, in and for the District of Nevada.

#5593.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

HENRY RITTER and D. CHURCH,

Defendants.

Amendments Proposed by Plaintiff to Bill of Exceptions.

After line 18 on page 7 insert the following:

IRA L. SWEARINGEN, called as a witness by plaintiff, testified as follows:

“I am employed with the Heinecke Construction Company. I know Mr. Ritter and I have seen Mr. Church. I was in Bowers Mansion on May

10th, 1922, when Mr. Ritter and Mr. Church were placed under arrest. I went there with Mr. Grier and Mr. Burris, and we asked for a drink. The man in the barroom said they did not have any, and later Mr. Ritter came in and we asked for a drink, and he went out of the place, I don't know where, I think to his own private quarters, and brought back a bottle and gave us a drink each. He did not serve it. He gave it to the man behind the bar who served the drink. Some stranger came in and we all had a drink at the bar, served by the bartender."

On cross-examination the witness testified as follows:

"I don't remember Mr. Ritter being outside or going out to the automobile. I don't remember asking him for a drink. Church said that he did not have anything to drink. Later Mr. Ritter came in. [40] As I remember Mr. Grier and Mr. Burris both asked for something to drink, and Ritter said he did not serve anything there. After some conversation he finally went and got this bottle. He was gone possibly five or ten minutes. I did not see any money on the bar. I know I did not take any money out of my pocket in payment of the drinks, and I did not see anyone behind the bar."

Amend line 6 on page 9 by inserting the following:

"Mr. Church hollered to us from the window when we drove up, and he came out and shook hands with us. I had not seen him for years. He was in Southern Nevada. Mr. Ritter brought down

the bottle and I think stood it on the bar, and then we were served a drink. Mr. Church served the drink. Henry Ritter was talking to me at the end of the bar. I think everybody at the bar, including the other man who served the search-warrant, took a drink.”

Amend line 27 on page 9 by inserting the following:

“I am employed on the Nevada Industrial Commission.”

Amend line 31 on page 26 by inserting the following:

The defendant Ritter, on cross-examination testified as follows:

“On May 12, 1922, when I was indicted, I came here to see the United States Attorney to appear before the Grand Jury, and told him of my own free will what occurred at Bowers Mansion. I do not know positively whether or not Scott and Du Bois paid for the drinks on May 8th. I would not swear either one way or the other. I called upon the United States Attorney voluntarily, and told him that I could not [41] swear whether or not Scott and DuBois gave me the money on the first trip. I went into the Grand Jury. Before going in I was advised that anything I might say might be used against me. I went freely and voluntarily. I said before the Grand Jury that I thought Scott and Du-Bois paid me a dollar for the two drinks they bought on May 8th, 1922, but I was not sure of it. ‘I am almost sure,’ I said, ‘But I could not swear to it.’ I think they paid me a dollar. That is my best

recollection at this time. I could not swear to it to-day. I do not recall a man and a woman being in the barroom on May 8th. They absolutely were not there. I don't know the woman named Mrs. Veal. Some fellow came up there and wanted to get a divorce from his wife and asked me if his wife was there, and I did not even know at the time that was his wife, but that woman was not in the barroom, or either one, on the 8th. There was not one, single, solitary soul in the barroom besides Scott and DuBois. Veal did not raise a fuss on that occasion. He came and he did not make any fuss at all. He asked me if his wife had been stopping there, that is long afterwards, and I said no, I did not even know his wife, didn't know anything about her, and she wasn't stopping there. I did not sell liquor to any one else. I had another gallon of liquor in addition to these two gallons. I guess I pretty nearly drank it all and I had to go pretty easy at that. If I was drinking any I could drink it in a month. I heard Mr. Carter say there were two empty jugs each of a gallon capacity containing the dregs of liquor, out of doors. I don't know anything about them. I don't think they were there [42] or belonged to me or not. I don't know anything about it, and I don't think there were any there on account of I haven't got any. I didn't see any high school children intoxicated about Bowers Mansion on May 8th or 10th, 1922. I said to Mr. Grier when they asked for a drink of intoxicating liquor that they had enough. They appeared to be somewhat intoxicated at that time. They had all

they needed. They could have got along without it. After Mr. Scott said I was under arrest Grier and the whole bunch stood there and asked Scott if he wanted them for anything and Scott told them no, they could go. When I first was in the barroom on May 10th there was a little money lay between some of the boys there on the counter, ten-cent pieces, nickels, quarters, four or five dollars, something like that. I didn't count it. I imagine there was four or five dollars. Mr. Church did not go behind the bar, I know. I went behind the bar. I brought the bottle down from my room, took it and went behind the bar, and Mr. Church had to move out of my way when I went in. Church was on the end on the outside, and I shoved him out of the way. I went behind the bar, took the glasses and gave Harry and Burris and the other man a glass apiece, and I took one. We all took a drink together and Scott came in and was shaking himself and I took one of the glasses and gave it to him and he poured it full. I gave the men the glasses. I do not know what became of the money while I was upstairs. I put the glasses on the counter, and I took them off the counter, and all took a drink from the bottle I brought from upstairs. I had the jugs in my room between the [43] dresser and the wall in a sack. I also had a funnel I used to fill up the bottles. I got the quart bottle out of my room in the dresser where there was a little cordial and a little Gordon Gin in the bottle, and that bottle of whisky. That is where I kept it for my own use. I didn't tell Scott and DuBois on May 8th that I would square

them with Steve at Franktown, and I did not telephone Steve.” [44]

In the District Court of the United States of America, in and for the District of Nevada.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

HENRY RITTER and D. CHURCH,

Defendants.

Bill of Exceptions.

BE IT REMEMBERED that the above-entitled cause came on for trial on the 15th day of December, 1922, and said trial was concluded on the 16th day of December, 1922, before the Honorable E. S. Farrington, one of the Judges of said court, and a jury empaneled; George Springmeyer, Esq., appeared as counsel for the Government; and M. A. Diskin, Esq., and James T. Boyd, Esq., appeared as counsel for the defendants.

The Government to maintain its case offered the following evidence and in the course of the examination of the witness, THOMAS SCOTT, the following proceedings were had:

Testimony of Thomas Scott, for the Government.

Q. Now, what occurred when you drank this corn whiskey, as you call it?

A. I retained the bottle, which was full with the exception of three or four glasses that had been taken out of it, and I walked over to Mr. Ritter,

(Testimony of Thomas Scott.)

took a warrant from my pocket, handed him a copy of it; he was leaning against the end of the bar, and I informed him I was a Federal agent, and the house was in the custody of the Government, I then stepped to the door where Mr. DuBois was, and requested Mr. DuBois to call the rest of the men; in the meantime I turned to Mr. Burris, Mr. Grier and the other gentleman and I told them, gentlemen, you are at liberty to leave if you wish, but if you wait until the rest of the boys come I don't know what action they will take; so they left. Agent Nash came along first, the other three agents following him; I handed the bottle to Mr. Nash, also the original search-warrant, and informed Mr. Nash that Mr. Church had sold the drinks. [45]

Mr. DISKIN.—We object.

Mr. SPRINGMEYER.—(Q.) Was this in the presence of Mr. Church and Mr. Ritter?

A. They were in the same room.

Q. Did they hear?

A. They could not very well not have heard it.

Q. What language did you use?

Mr. BOYD.—We object to what language he used. You can't define the crime by the language used by this witness after the commission of the offense, it is merely descriptive of what has transpired.

THE COURT.—Have you any authority that a statement made in the presence of the defendants is inadmissible for that reason?

Mr. BOYD.—No, sir, it is a general proposition.

THE COURT.—I know of no authority. A

(Testimony of Thomas Scott.)

statement made with reference to the commission of an offense in the presence of the defendant has always been admissible in this court. If there is a rule to the contrary I would like to see it.

Mr. BOYD.—I haven't those at my finger tips, but we make the objection just the same.

THE COURT.—You should always anticipate the Court is ignorant on matters of that kind, and needs instructions. The objection will be overruled.

Mr. BOYD.—Exception.

Mr. SPRINGMEYER.—(Q.) Please answer the question.

A. When Mr. Nash came to the door I handed him the bottle and warrant, with the remark, "Here is the bottle and the warrant, Mr. Church served the liquor, Mr. Ritter got the bottle just outside of the door, he was only gone a moment"; I then left the premises.

And the plaintiff in error now assigns his exception to the ruling of the Court overruling defendant's objection to the question propounded, as stated above, and to which an exception was duly entered.

That counsel for the defendant before the jury retired requested the Court to charge the jury as follows, and that in reference to said charge the following proceedings were had:

"Mr. DISKIN.—If your Honor please, we would request the Court at this time to give to the jury the instruction presented to the Court by the defendants for the use of a decoy. That instruction

was taken from the case of *United States vs. Peterson*.

THE COURT.—Yes, I understand that, and I cannot follow it. It simply means this, if I understand that instruction: If a Federal official goes into a soft-drink place, asks for a drink of whiskey and gets it, the man who sells it is not guilty. I cannot understand it any other way; and this is not the [46] decision in the Circuit Court of Appeals in this district by later authorities.

Mr. DISKIN.—May we have an exception to the Court's refusal to give it?

THE COURT.—You may have an exception. Is there anything else?

Mr. DISKIN.—That is all.

THE COURT.—I simply say this: I cannot bring my mind to the conclusion that the Circuit Court of Appeals for this circuit, or any other court, will uphold the doctrine I have announced, that if a Federal official, or any other official, goes into a soft-drink place and asks for a drink of whiskey, that the person who sells the whiskey cannot be convicted; and I cannot understand that instruction any other way."

And that the instruction so requested by defendant to be given to the jury by the Court and which the Court refused to give to the jury, reads as follows:

“ ‘Under the second count of the indictment the defendant Ritter is charged with having on a day specified sold intoxicating liquor contain-

ing more than one-half of one per cent, of alcohol per volume and fit for use for beverage purposes.

‘The defendant Ritter claims that he was entrapped into selling the liquor through the instigation of the prohibition officers, and that the liquor would not have been sold at all, if it had not been for the importunities of the Prohibition officers who went to his place for the purpose of buying liquor.

You are instructed that if you believe from the evidence, that defendant was induced by the importunities of the Government agent or agents to violate the law, and that through the instigation of agent Scott or DuBois, or both of them, representing the prohibition department, the defendant Ritter, was induced to sell the liquor, and that defendant Ritter would not otherwise have violated the law, then you should return a verdict of not guilty, as it is the policy of the United States Courts not to uphold a conviction in any case where the offense was committed through the instigation of the Government agents.’ ”

And the defendant also then and there, and before the jury retired, excepted to the ruling of the Court in failing to charge the jury as above requested by the defendant. Whereupon the jury retired and brought in a verdict finding the defendant guilty as charged in the indictment. And that thereafter the defendant, and within ten days from

(Testimony of Thomas Scott.)

the date of trial of this case, duly presented [47] and filed with the clerk of this court his bill of exception to the Court's refusal to give the afore-said instruction.

AND BE IT FURTHER REMEMBERED that THOMAS SCOTT, a witness produced on behalf of the Government, after being first duly sworn, testified as follows: That since the 20th day of February, 1922, he has been and now is a federal prohibition agent; that he has known defendant Ritter four or five years; that during the month of May, and on the 8th day of May, 1922, in company with Agent DuBois of the prohibition force, and at the hour of 3:35 P. M. on said day, he visited the premises described as Bowers Mansion; that Bowers Mansion was a summer resort where soft drinks and lunches were served, and that in connection with the said place there was a barroom consisting of a bar, a table, and a couple of chairs; that there was a lot of glasses and bottles back of the bar; that on the day in question Scott entered the premises the defendant Ritter came forward to meet him; Scott said to Ritter, "How do you do, Mr Ritter?" and Ritter replied, "How do you do?" Scott then said, "It is a pretty cold day, that wind is blowing," and Ritter replied, "Yes, it is pretty cold. Which way are you headed?" Scott replied that he was headed toward Carson; Scott further said to Ritter, "What is the chance of getting a little shot?" and Ritter says, "All right." Ritter went behind the bar and got a quart bottle about half full of liquid, put the

(Testimony of Thomas Scott.)

bottle and the glass on the bar; Scott filled the glass about half full and drank it and Scott paid him, Ritter, one-half a dollar for it. DuBois was called to the place by Scott; after DuBois obtained some oil for his car he came back to the barroom and called for a shot. Ritter put the bottle up in front of both Scott and DuBois and each took a glass of liquor. DuBois paid \$1.00 for it. Scott then tried to [48] buy a bottle and Ritter informed Scott that all he had on the place was in the bottle and he wanted to keep that for the boys. Scott and DuBois then left the place and returned again at 4:20 P. M. at which time Mr. DuBois bought two drinks of corn whiskey, one for himself and one for Scott. DuBois saved some liquor by putting it into a small bottle. There were then a man and woman standing at the south end of the bar, each with a small whiskey glass containing some brown liquid. The money that was paid for the drinks was put into the cash register. Scott and DuBois returned again to the premises on the 10th day of May that same year at 3:40 P. M. and three people, Mr. Grier, Mr. Burris and another were walking toward the bar on this occasion; all five went to the bar together; that Mr. Ritter went behind the bar, got an empty quart bottle, and left the barroom and returned in about three minutes, and handed the bottle to defendant Church, who pulled the cork, and put glasses on the bar; then the bottle was passed to the men standing in front of the bar and when it came to Scott he drank a little of the liquor to make sure

(Testimony of Thomas Scott.)

what it was, then seized the bottle, and that the bottle contained corn whiskey. Scott further testified that he then called in the other officers and arrested defendants, and on the occasion of his visit on the 10th day of May there was money on the bar in front of one of the men standing before the bar—the amount of which was \$2.50. That in the presence of the defendants he informed officer Nash that Church had sold the drinks and that Ritter got the bottle just outside the door.

On cross-examination Scott testified that on May 8, 1922, he said to defendant Ritter, "How do you do, Mr. Ritter?" and that Ritter shook hands saying something about [49] the weather being cold and the wind blowing. That Scott gave no excuse for asking for a drink. That when he asked for a drink, Ritter went behind the bar and got the bottle about a minute after Scott entered. That Scott and DuBois had no trouble at all in getting either the first or the second drink on May 8th. The second time DuBois walked in and said, "Give me another drink," and Ritter placed the bottle and the glasses on the bar. The same man and the same woman as on the first occasion were then in the bar-room, standing at the south end of the bar.

On May 10th, 1922, first saw Grier and Burris and another man walking toward the bar. Defendant Ritter was at the end of the bar, and defendant Church back of the bar. Then Ritter took an empty bottle, left the barroom by the door on the south side and returned in two or three minutes with a full

(Testimony of Thomas Scott.)

bottle. Ritter handed the bottle to Church, who pulled the cork and set the bottle before the first man at the bar. The money was still on the bar when Scott walked out, after the drinks were served. Scott tasted the liquor before seizing the bottle.

Testimony of Mr. DuBois, for the Government.

Mr. DUBOIS testified that on the 8th day of May, at 3:35 P. M. after he purchased some oil for his car, that he and Scott went into the barroom and bought from Ritter a drink of liquor; that it was whisky; that he gave Ritter \$1.35 in payment of two drinks of liquor, a pint of oil and a cigar; that a man and a woman were in the barroom at the time; Scott and DuBois returned at 4:20 P. M. on the same day. The man and woman were then standing at the south end of the bar, drinking from whisky glasses something that looked like liquor. Scott and DuBois ordered drinks which were served by defendant Ritter from a quart bottle which he took from behind the bar. DuBois paid a dollar for the [50] two drinks which defendant Ritter placed in the cash-register. DuBois saved his drink. On May 10th, DuBois, in company with Scott again visited the premises. Scott went indoors and came out holding a quart bottle in his hand and telling DuBois to call the rest of the bunch. DuBois saw the defendants and three or four others, whom he did not know, before the bar, on which there were glasses. The place is a soft-drink establishment.

(Testimony of Mr. DuBois.)

On cross-examination, DuBois said that after he left the premises on each occasion he made notes of what had occurred, and that Scott did likewise. Scott and he on May 8th got oil for the car at a little garage at Bowers. Then they went inside where DuBois bought a round of corn whisky from defendant Ritter, who was back of the bar. A man and a woman were present at the time. Defendant Ritter would not sell a bottle because he said he did not have it to spare, but he said he would "Square them at Steve's," about a mile down the road. DuBois and Scott returned in about three-quarters of an hour.

Testimony of Harry Grier, for the Government.

HARRY GRIER, called as a witness by the plaintiff, testified that he was acquainted with Mr. Ritter and Mr. Church that he was present at Bowers Mansion on the 10th of May, 1922. That he was on his way to Reno in the afternoon of that day with Mr. Burris and Mr. Swearingen and they stopped at Bowers Mansion and saw Mr. Church looking out of the side window. Mr. Burris spoke to Church but he, the witness, did not recognize Church at first. Church came out and shook hands and the party returned into the saloon and somebody asked if there was anything to drink and Church said "Yes, soft drinks," and they asked if there was anything else and he said, "No." One of the party asked where Henry was and Church said he was upstairs and Burris went after [51] Henry, and Henry

(Testimony of Harry Grier.)

came down with a bottle of whisky, "and I was standing at the end of the bar talking to Henry; he was at the end of the bar like this (illustrating), and I was standing here, when this man, I didn't know who he was, and wouldn't know him now, I don't believe, said, well, I think he said, 'You are under arrest,' or something, 'I will take that,' and he took the bottle, and then he came over and he served on me a paper, and I opened it, and it was a search-warrant, and I just—he served it on me and I opened it and glanced at it, and saw it was made to Henry Ritter, and I said to Henry, 'I guess this belongs to you,' and I handed it to him, and then I think Steve said, 'Let's go; this is no place for us,' or something of that sort, and we left there and came around and got in my car, and I started the engine, and we were just coming around back of the house out of the driveway when an automobile came around with Nash and Brown, and I don't know, there may have been one or two others in there. That is all I know about it." Mr. Church served us with the drink, Ritter was at the end of the bar talking to me. Henry Ritter was at the bar, I stood next to him, Mr. Burris next to him and Steve next to Burris and then this other man I don't know who he was, he was the man who served the warrant. The whisky was in quart bottles, Mr. Ritter brought it in his hand when Mr. Burris asked for it. We drank the whisky out of whisky glasses

(Testimony of Harry Grier.)

On cross-examination the witness testified that Mr. Ritter was not there when they first went in. Someone asked Mr. Church for a drink and he was informed that they had nothing but soft drinks. "When we first went in and asked for Ritter, Mr. Church informed us he was upstairs, and Mr. Burris went out and came back with Mr. Ritter. [52] "Ritter had a bottle and set it on the bar. There was just Mr. Burris, Steve, Henry Ritter and Mr. Church and Swearingen in the bar and the other man (an officer) was not invited to have a drink but I am not positive of that." Everybody took a drink. "I did not buy a drink and did not go in there for the purpose of buying a drink."

Testimony of R. P. Burris, for the Government.

R. P. BURRIS, a witness called on behalf of the plaintiff, testified that he lived in Carson and was employed on the Highway Commission, that he knew Mr. Ritter and Mr. Church and was present at Bowers Mansion on the afternoon of May 10th, 1922, when Federal Officers placed defendant under arrest for violation of the Prohibition Law. "Well, we went in and asked the bartender for a drink, and the bartender said he didn't have anything, they served nothing but soft drinks there, so we asked for Mr. Ritter, and he went to Mr. Ritter's room, and he came down, and we persuaded him to give us a drink, and he said they didn't have anything but soft drinks, but he would go to his room, and he came down with a bottle, and we had a

(Testimony of R. P. Burris.)

drink." "I don't know whether it was a quart bottle or not and contained the liquor, it was a large bottle." Mr. Grier, Mr. Swearingen and myself and some stranger was there at the time and we all had a drink, "at least I think so." "We had one drink." "Then a warrant was handed to Mr. Grier and he said it wasn't for him, and he handed it to Mr. Ritter and just then we all beat it."

On cross-examination the witness testified that he had known Mr. Ritter off and on for six or seven years and had been friendly with him. "When we first went into the barroom Mr. Ritter was not there. The bartender told us that he did not have anything and he said Mr. Ritter [53] was in his room and we asked him to go to the room for him. "Mr. Church went to the room for him, I did not go after Ritter. Ritter came down first empty handed and after he found out what we wanted he went back after the bottle." Mr. Grier had a conversation with Mr. Ritter when he first came down. Mr. Grier told Mr. Ritter he wanted a drink. After Grier told Ritter that Ritter went upstairs somewhere and got a bottle. "I did not see any money change hands." "I did not see the stranger that was there until he came up from behind the stove. He was not in the balance when we first went in. I think he was there when Mr. Ritter first came down and remained there until after Mr. Ritter came in the second time. I did not see any money on the bar nor did I see anyone offer to pay for the drink."

(Testimony of R. P. Burris.)

On redirect examination witness testified that he did not know whether any money was passed or not; everyone was pretty well excited when they found the raid was in progress. "I know that I did not pay any money there."

Testimony of A. Carter, for the Government.

A. CARTER, being sworn as witness for the plaintiff, testified he knew Mr. Ritter and Mr. Church the defendants. Knows Bowers Mansion. "It is a sort of soft-drink establishment and a resort." Been there on several occasions. Was there early in May and saw soft-drinks; saw people there.

Q. How were they, drunk or sober when you saw them?

Mr. DISKIN.—That is objected to.

Mr. BOYD.—We object to that as incompetent, irrelevant and immaterial.

Mr. SPRINGMEYER.—(Q.) On the 10th day of May have you seen people there who were drunk or sober?

Mr. BOYD.—We make the same objection, that it is incompetent, irrelevant and immaterial. [54]

Mr. SPRINGMEYER.—I don't think that is incompetent, irrelevant, or immaterial.

The COURT.—You allege possession of intoxicating liquor on the 8th and 10th?

Mr. SPRINGMEYER.—Yes.

The COURT.—I will allow the question.

Mr. BOYD.—We take an exception.

(Testimony of A. Carter.)

Mr. SPRINGMEYER.—(Q.) How about it, Mr. Carter? A. I have seen them both ways.

The COURT.—I think there are two days.

WITNESS.—On one occasion.

The COURT.—May 8th or 10th.

WITNESS.—On the 10th.

Witness was present when Mr. Ritter and Mr. Church were placed under arrest.

“I accompanied the rest of the officers out there on the raid; when we were called inside by agent Scott they already had been placed under arrest; I helped search the hallway and the outbuildings, was my particular job.” “In the place, the outbuilding directly behind the bar, I found two jugs that had contained alcoholic liquor.” That they were gallon jugs. “I did not see any liquor in the barroom that day only what had been seized and Mr. Brown had some bottles.” Mr. Nash had the liquor when the witness first saw it—it was a quart bottle, he the witness did not go into the bar.

On cross-examination the witness testified that he did not visit the premises on the 8th of May but visited them on the 10th of May. “I don’t know the parties I saw intoxicated there that day. They were outside of the barroom. I don’t know where they got their liquor.” “I don’t want the jury to infer from my testimony that they got the liquor at Ritter’s place.” [55]

“I did not see them buy any liquor, all I know is that I saw people that were intoxicated.”

(Testimony of A. Carter.)

Q. Were they staggering?

A. They were walking.

Q. Walking? A. Yes, sir.

Q. What time of day was it?

A. It was in the afternoon when we were there.

Q. How soon after the arrest was it?

A. Why, oh just a few minutes, I could not state the exact time.

Q. They were walking you say? A. Yes, sir.

Q. Well, what gave you the impression or led you to the conclusion that they were intoxicated?

A. From their appearance.

Q. What about their appearance?

A. Well, they wasn't walking very straight, walking in a slow manner.

"These people might have been Mr. Grier and Mr. Burris, I did not know them. I saw them right after the arrest." "I don't know how they left the place." "I did not see them come out of the barroom and I am not positive where they came from—they might have been walking around there for an hour or more."

Testimony of H. P. Brown, for the Government.

H. P. BROWN, called as a witness for the plaintiff testified:

Q. Mr. Brown, you are now and have been for several years Federal prohibition agent for the State of Nevada? A. Yes, sir.

Q. Were you present on May 10th, 1922, in the

(Testimony of H. P. Brown.)

afternoon at Bowers Mansion when the defendants Ritter and Church were placed under arrest?

A. Yes, sir.

Q. Just tell the Court and jury what you saw and heard and did.

A. Mr. Nash and I entered the soft drink part of Bowers Mansion; Mr. Scott, agent Scott, was there, and he told Mr. Nash and I— [56]

Mr. DISKIN.—Just a moment. He told who?

A. He told Mr. Nash and I.

Mr. DISKIN.—I object to that as hearsay.

Mr. SPRINGMEYER.—Unless it was in the presence of the defendants, or either of them.

A. It was.

Q. Did they hear it? A. I don't know.

Q. How far away were they?

A. Oh, probably three or four steps.

Q. Then state, please, what Mr. Scott said.

A. Mr. Scott says, "Here is the bottle," he says, "The bartender served the drinks, and Ritter went out to get them, to fill the bottle."

Q. What sort of a bottle was it that Mr. Scott showed you? A. A quart bottle.

"Mr. Ritter and I went upstairs and I asked him to show me where his room was, and he did so."

Mr. SPRINGMEYER.—(Q.) What did you find in the premises, Mr. Brown, if anything?

A. I asked Mr. Ritter to show me his room, and he took me up and showed me a room where no one was living, and I told him I wanted to see his room, and he took me over to his room, and right behind

(Testimony of H. P. Brown.)

the door there was a sack containing two gallons of liquor and a funnel, a brass or copper funnel.

Q. Will you please examine these two bottles and state whether they are the bottles or containers you found in that room?

A. Yes, sir; those are the two; the funnel, we are unable to find the funnel.

Q. You say there was a funnel?

A. A copper funnel, yes, sir.

Q. And what else?

A. Those things were in a barley sack.

Q. What was done with these bottles? [57]

A. Mr. Nash took charge of them; I think we left Mr. O'Neil with the evidence, to watch the evidence while we went on another errand.

On cross-examination the witness testified:

Mr. BOYD.—(Q.) Mr. Brown, who served the search-warrant? A. I don't know.

Q. How did you know a search-warrant was served?

A. I didn't know one was served; I knew there was one out, and I knew that they had it on the way down.

Q. Then you were mistaken when you answered Mr. Springmeyer that you knew a search-warrant had been served, weren't you?

A. I didn't see it served; I knew we had a search-warrant for the place.

Q. That is not my question. You were mistaken when you told Mr. Springmeyer that you knew a search-warrant had been served?

(Testimony of H. P. Brown.)

A. Yes, sir, if I said that I am mistaken.

Q. You didn't see a search-warrant at all?

A. No, sir; I did not.

Further testified that nobody called him into the place, he walked in through the door. Mr. Nash and Mr. O'Neil were with him. That he was in the car with Mr. Nash, Mr. O'Neil and Mr. Carter. That they stopped outside the gate and waited for orders from Mr. Scott when to come in. They waited probably three or four minutes. "Mr. Nash told me that Mr. Scott had told us to come in. I went from the car around to the south door and went into the barroom. While I was going around the south-side I saw Mr. Grier and Bubbles. I didn't meet anyone else when I got into the building I saw Mr. Scott and Mr. Ritter. Bubbles and Harry Grier were in the car outside the building. [58] When I went in there I saw Mr. Scott, Mr. Ritter and Mr. Church. Mr. Church was behind the bar I can't say exactly where, Mr. Ritter was standing. Mr. Scott was at the door. Scott had a bottle of liquor in his hand. Mr. Nash was also inside. He went in one door and I went in the other. He got in there about the same time I did I guess."

On redirect examination the witness testified: "When I went in there I saw some glasses and two dollars and a half in silver on top of the bar."

Recross-examination.

"Mr. BOYD.—(Q.) Why didn't you state that the first time I asked you what you saw there, Mr. Brown?

(Testimony of H. P. Brown.)

A. I thought you meant in regards to people.

Q. I asked you what you saw in there the first time, and then I asked you about the people. You saw two dollars on the bar? A. No, sir.

Q. How much did you see?

A. Two dollars and a half.

Q. Two and a half? A. Yes, sir.

Q. You didn't put that there, did you?

A. No, sir.

Q. Did you see anybody put it there?

A. No, sir.

Testimony of P. Nash, for the Government.

P. NASH, called as a witness for the plaintiff, testified: That he was one of the Federal Prohibition Agents of the State of Nevada that he was present on the afternoon of May 10th, 1922, at Bowers Mansion in Washoe County, Nevada, when the defendants Ritter and Church were placed under arrest.

Please state just what you saw and heard.

A. Do you want the entire occurrence from the time we came down the road ?

Q. Yes, in chronological order, as near as may be.

A. We were in our car at a point about, possibly a hundred [59] yards from the gate, the entrance to Bowers Mansion property, and saw Mr. DuBois come out to the entrance, to this gate, and give me the high sign, this was a signal that had already been agreed upon; we then drove up to the side door, got out, went into the barroom, and met Mr. Grier just outside the door on the porch; went into

(Testimony of P. Nash.)

the barroom, found Mr. Scott there with Mr. Ritter and Mr. Church; I didn't know Mr. Church, I knew Mr. Ritter; and Mr. Scott told me that Mr. Church sold the drinks and Mr. Ritter—

Mr. BOYD.—Wait a minute. Was that in the presence of Ritter and Church, and within their hearing? A. It was.

Mr. BOYD.—We want to make the objection that it is immaterial, irrelevant and incompetent, and hearsay, and have it understood this objection will apply to this class of testimony.

Mr. SPRINGMEYER.—Yes, that is all right.

WITNESS.—There is a reason for this statement, I can explain it.

Mr. BOYD.—Never mind the reason, give the answer.

Mr. SPRINGMEYER.—(Q.) Please give the statement, Mr. Nash.

A. The statement is that Mr. Church sold the drinks and Mr. Ritter brought in the bottle.

Mr. SPRINGMEYER.—(Q.) Go on and describe what you saw and heard and did?

A. Mr. Scott when he left handed me the warrant, the original of the warrant, so as to be sure to have our authority with us.

Q. Yes.

A. And Mr. Brown took Mr. Ritter, and went to a back room or somewhere, I don't know; I went down in the cellar, and searched behind the bar, and found soft drinks there.

(Testimony of P. Nash.)

Q. Before Mr. Brown took Mr. Ritter do you know whether or not the search-warrant had been served? [60]

A. It had been served; Mr. Ritter already had a copy of it, and I exhibited to him the original that I had.

Q. And what was done with this bottle which you say Mr. Scott had?

A. I took it in my possession immediately.

Q. Did you see anything on the bar?

A. Yes; I saw the whiskey glasses and I saw money.

Q. What money did you see on the bar?

A. Two and a half.

Mr. SPRINGMEYER.—(Q.) How many men were in the barroom when you entered, Mr. Nash?

A. When I entered?

Q. Yes.

A. Mr. Scott, Mr. Ritter and Mr. Church were all in there when I entered; I met Mr. Grier on the porch, coming out.

Q. Just coming out of the room? A. Yes.

Q. And the other two men, Burris and Swearingen?

A. They were in the car, I think, or getting into the car; there was a car there, they drove off in it, and at the time they drove off I didn't pay any more attention to them.

Q. Where were Church, Ritter and Scott standing?

(Testimony of P. Nash.)

A. When I came in Mr. Church was behind the bar, about the center; Mr. Ritter was at the south end, and Mr. Scott was standing in front of the bar.

On cross-examination the witness testified:

“I saw some whiskey glasses and I saw some money and I saw some soft-drink bottles. I guess that is about all there might have been a stove there.” “Mr. Scott was standing in front of the bar, Mr. Ritter at the end of the bar, the south end, Mr. Church behind the bar.”

Q. Who served the warrant?

A. Mr. Scott gave me the original, and I, if you call it serve, showed it to Mr. Ritter again, I presume he had had it once before, but to make sure.
[61]

Q. I didn't ask your presumption; I asked who served the search-warrant.

Mr. SPRINGMEYER.—If you know.

A. I know that I served what was given to me, if you call it service; I showed it to him, he already had a copy in his hand.

Mr. BOYD.—(Q.) You didn't give him a copy?

A. No, sir.

Witness further testified:

Q. Where was Mr. Church?

A. Mr. Church was behind the bar.

Q. What end of the bar?

A. He was in the middle of the bar.

Q. Right in the middle of it, and these glasses were on the bar there? A. They were.

Q. And two and a half in money? A. Yes.

(Testimony of P. Nash.)

Q. Did you count it? A. I did not.

Q. How do you know it was two and a half?

A. Because it was two and a half.

Q. How do you know it?

A. Well, there are some things a person knows.

Q. How do you know it if you didn't count it?

A. Two dollars and a half dollar make two and a half.

Q. If you counted it you saw two one dollars and fifty cent piece, didn't you?

A. Yes, I saw two dollars and a fifty cent piece.

Q. Where was it? A. On the bar.

Q. Middle of the bar or on the end?

A. Somewhere about,—I would not care to testify as to the exact position of the money, to tell the truth; I think it was close to Mr. Church, but I don't know for sure.

Q. Wasn't it at the south end near Mr. Ritter?

A. I don't know, it was on the bar, that is all I do know.

Q. Was it the middle of the bar? [62]

A. I don't know, it might have been toward the south end, and might have been exactly in the middle.

Q. And that is the best you can say, is it?

A. It is.

Mr. BOYD.—All right. That is all.

Mr. SPRINGMEYER.—That is all, Mr. Nash.
The Government rests.

Testimony of D. Church, for Defendants.

D. CHURCH, one of the defendants, called on behalf of the defendants, testified as follows: That his name is Deisn Churich, was born in 1855, worked in the shops in Sparks for three years and quit a year ago. First met his codefendant Mr. Ritter in 1884. That he was not at Bowers Mansion on the 8th day of May, 1922, but went there on the 9th. He went to work at Bowers Mansion the last Sunday in May. Did general work around the bar and everything of that kind. He was at Bowers Mansion on the 10th day of May, 1922. "I knew Mr. Grier and Mr. Burris, saw them at Bowers Mansion on the 10th day of May. I had received bad news from my home."

He further testified:

Q. Now just go right along and tell the jury what took place?

A. I was in the saloon and Mr. Grier come in their automobile on the side, on the side window, come in automobile, and stop right in front of window of the saloon, on the north side; I was at the window there, and I just raised my hand, and they come in.

Q. Was Mr. Ritter there at the time?

A. No, no, I don't think so.

Q. How? A. I was the only one in the bar-room.

Q. You were the only one in the barroom?

A. I was the only one in the barroom, so he came

(Testimony of D. Church.)

in and ask me, "How is everything?" I say, "Everything is all right"; he say, "You got anything to drink?" I say, "No, nothing there but soft drinks, that is all, he don't keep liquor here at all." [63] "You know us," he say, "and we all right," he say. "If you got it, give it to us"; I say, "No, I ain't got it."

Q. Who carried on the conversation with you?

A. Mr. Grier.

Q. Mr. Grier?

A. Yes, I say, "No," I say, "I got nothing but soda, or something like that; that is all"; I say, "I ain't work here either, I am just here stopping here, that is all." "Where is Mr. Ritter?" I say, "I don't know; he is out somewhere. He ain't around here."

Q. Proceed, and go a little slower, please.

A. They went out.

Q. Who went out?

A. Mr. Grier, they went out and look around I think for Mr. Ritter; so after while Mr. Ritter come in, and they come in, they was talking there, one thing and another, and they ask him about the drinks, you know; Mr. Ritter tell him, he say, he don't have nothing; then after while he went out again.

Q. Who went out?

A. Mr. Ritter; I was standing outside the bar there, just leaning on the bar, you know how it is, I felt bad, and I didn't care what is going on; so they come in and stand at the bar there.

(Testimony of D. Church.)

Q. Who came in?

A. These three men, was standing in front of the bar and talking, talking about Goldfield, you know.

Q. You knew them down in Goldfield?

A. Oh, yes, fifteen or sixteen years ago; and that time Mr. Ritter come.

Q. Then Mr. Ritter came in?

A. And another man, Scott; he come in the door, and he was talking there, and honest, I didn't look around, I didn't notice him at all.

Q. Did you see Mr. Ritter have anything in his hand when he came in? A. No, sir, I didn't.

[64]

Q. You saw a bottle, didn't you?

A. I saw a bottle pass each other, pass until it came to Scott the last time; I was standing next to Scott; he turn around and say, "You want a drink?"

Q. Who did he say do you want a drink to?

A. Ask Scott; he say, "You want a drink?" he say, "Yes," and he take a drink, and he says, "I keep the bottle," I notice that time the bottle, you know.

Q. Did Mr. Ritter hand the bottle to you that morning when he came in?

A. No, sir, I never touch the bottle; I look down this way (showing), I feel bad.

Q. You heard the testimony, I think by one of the officers, that Mr. Ritter handed the bottle to you, and you took the cork out of the bottle?

A. Scott say that; I never touch it.

(Testimony of D. Church.)

Q. Did you have a drink?

A. No, sir, I never drink.

Q. Did Mr. Ritter offer you a drink?

A. Well, but I never drink.

Q. Well, he offered you a drink, didn't he?

A. Well, he say, "Have a drink," but I don't drink, I never do drink.

Q. Don't you take liquor at all?

A. No, sir, I never drink; I felt bad, you know, and he thought I take a drink, I better, you know.

Q. You had nothing to do that day with that liquor?

A. Nothing in the world. I was standing in front of the bar when they come in, you know, and I step one side, you know, end ways of the bar, just leaning this way (illustrating) on the bar, you know how I have feeling.

Q. You saw Mr. Ritter, Mr. Grier, Mr. Burris and the other two gentlemen have a drink that time, didn't you, Mr. Church?

A. Why, I didn't see them on the start; I see them when he got the bottle in his hand and say he going to keep the bottle; at that time I look and see what happen. [65]

On cross-examination the witness Church testified: "I was born in Austria, and I was in Serbia." That he has been a naturalized citizen for forty-three years. "I was not in charge of the barroom on the 10th of May when Mr. Ritter was out. I was just in the saloon, that is all. I walked along

(Testimony of D. Church.)

the bar, behind the bar and stand there. I didn't give any glasses to the men."

Q. Did you give the glasses to the men in front of the bar?

A. No, sir, I didn't touch the glass.

Q. How did they get the glasses?

A. I don't know; I didn't give them no bottle or glasses, or nothing there behind the bar at all.

Q. Did you see Mr. Ritter get the bottle?

A. No, sir.

Q. You did tell them that you had soft drinks there? A. I told them I had soft drinks.

Q. You were standing back of the bar then, were you not? A. No, I was outside.

Q. You were outside? A. Outside.

Q. Did you tell them to see Mr. Ritter?

A. I says, "See Mr. Ritter, I don't know nothing about it; I just come in here."

Q. Then did you step back of the bar?

A. No, just went end of the bar that way.

Q. Just the end of the bar? A. Yes.

Q. And you didn't go back of the bar at all?

A. Afterward I went about three feet back of the bar.

Q. Isn't it a fact that you went back of the bar, and that you got the glasses from back of the bar, and put the glasses in front of each of the men standing in front of the bar; is not that true?

A. No, sir.

Further testified:

"I did not see any money on the bar." [66]

Testimony of Henry Ritter, for Defendants.

The defendant RITTER testified that on the 8th day of May, 1922, Agents Scott and DuBois entered that portion of Bowers Mansion occupied as a barroom. They came in together and they were shaking and shivering. DuBois didn't say very much but Scott said: "Give us a drink." I says, "I haven't got anything, I am not selling booze here." "Oh, he says, "come on, it is awful cold," and just shaking and shaking, so I says, "There is nothing doing," so he kept at it and kept at it. He kept asking me to give him liquor, and was shaking and shivering and carrying on, you know; DuBois didn't do much of that, but Scott was pretty strong at it; so finally DuBois was feeling pretty bad, too, I says, "I haven't got any"; pretty soon Scott says, "Damn it, you knew me when I was constable in Sparks, I vouch for my friend, you need not be afraid of us"; I says, "I don't care, I am not selling any booze, and I haven't got any." Pretty soon he says, "Haven't you got a bottle of your own, private?" and then they was shivering and shaking all around, and they kept begging and begging, it was awful cold that day, it was snowing and blowing, and every little while it started to blow and snow, and I kind of feel sorry, and I says, "Damn it," so I went up and got my bottle.

Q. Where did you get your bottle?

A. I went up to my room, upstairs.

Q. Did you have any back of the bar at that time?

(Testimony of Henry Ritter.)

A. No, sir, I never had; I went up and got a bottle and brought it down, and there was about that much in the bottle (showing); so they took a drink, then they want to buy some; he said, "That is damn good stuff," Scott said, he says, "Sell me a little of that." I says, "No," I says, "I haven't got any bottle"; he says, "Take that soda bottle or beer bottle, or anything"; so I picked the bottle up and went upstairs again with it, and I went out the front, and they left. [67]

Q. Now, Mr. Ritter, when Mr. Scott and Mr. DuBois came into your place on this first visit who was in the barroom? A. Nobody but myself.

Q. You heard the testimony that there was a man and a woman there? A. Yes.

Q. Was there a man and a woman there on that occasion? A. No, sir.

Q. There was no one but you and Scott?

A. I was all alone in the barroom when they come in there. I just walk through the center of the house, went to the barroom, and then they come in; there wasn't a soul there that day on account it was cold; I don't know if anyone outside of Scott and DuBois came all day long.

Q. How much time elapsed did you say from the time Scott and DuBois came into your place until you gave them this drink?

A. It was at least from twenty minutes to a half an hour, at least.

Q. During all this time was Scott directing to

Testimony of Henry Ritter, for Defendants.

The defendant RITTER testified that on the 8th day of May, 1922, Agents Scott and DuBois entered that portion of Bowers Mansion occupied as a barroom. They came in together and they were shaking and shivering. DuBois didn't say very much but Scott said: "Give us a drink." I says, "I haven't got anything, I am not selling booze here." "Oh, he says, "come on, it is awful cold," and just shaking and shaking, so I says, "There is nothing doing," so he kept at it and kept at it. He kept asking me to give him liquor, and was shaking and shivering and carrying on, you know; DuBois didn't do much of that, but Scott was pretty strong at it; so finally DuBois was feeling pretty bad, too. I says, "I haven't got any"; pretty soon Scott says, "Damn it, you knew me when I was constable in Sparks, I vouch for my friend, you need not be afraid of us"; I says, "I don't care, I am not selling any booze, and I haven't got any." Pretty soon he says, "Haven't you got a bottle of your own, private?" and then they was shivering and shaking all around, and they kept begging and begging, it was awful cold that day, it was snowing and blowing, and every little while it started to blow and snow, and I kind of feel sorry, and I says, "Damn it," so I went up and got my bottle.

Q. Where did you get your bottle?

A. I went up to my room, upstairs.

Q. Did you have any back of the bar at that time?

(Testimony of Henry Ritter.)

A. No, sir, I never had; I went up and got a bottle and brought it down, and there was about that much in the bottle (showing); so they took a drink, then they want to buy some; he said, "That is damn good stuff," Scott said, he says, "Sell me a little of that." I says, "No," I says, "I haven't got any bottle"; he says, "Take that soda bottle or beer bottle, or anything"; so I picked the bottle up and went upstairs again with it, and I went out the front, and they left. [67]

Q. Now, Mr. Ritter, when Mr. Scott and Mr. DuBois came into your place on this first visit who was in the barroom? A. Nobody but myself.

Q. You heard the testimony that there was a man and a woman there? A. Yes.

Q. Was there a man and a woman there on that occasion? A. No, sir.

Q. There was no one but you and Scott?

A. I was all alone in the barroom when they come in there. I just walk through the center of the house, went to the barroom, and then they come in; there wasn't a soul there that day on account it was cold; I don't know if anyone outside of Scott and DuBois came all day long.

Q. How much time elapsed did you say from the time Scott and DuBois came into your place until you gave them this drink?

A. It was at least from twenty minutes to a half an hour, at least.

Q. During all this time was Scott directing to

(Testimony of Henry Ritter.)

you this conversation and the request for the purpose of liquor? A. He did.

Q. Do you know whether or not after you had given them liquor, you received any money for it?

A. I could not positively swear to it; I had an idea they first wanted to pay for it, I don't know for sure, I could not swear to it, and I would not, but I didn't, I never sold any; I walked out with the bottle and took it back upstairs, and they left.

DuBois did not purchase any oil or a cigar. Scott and DuBois returned in about three-quarters of an hour and commenced again to ask for drinks and said, "Give us another drink, give us another little drink"; "so I went upstairs and got a bottle and gave them a drink, and then they [68] wanted to buy a bottle, and I says no, and it made me kind of sore the way I refused before and they begging again, so I just took the bottle and started out and they turned around and walked out—all three together. They did not pay for that drink." There was nobody in the barroom on the occasion of the second visit that day.

Ritter further testified that on the 10th day of May, that he had been in Franktown, that he came home walked through the house and heard someone talking and met Mr. Grier and Burris and the Heinicke man and said he knew them all, and they talked together a few minutes and shook hands and Grier said, "Haven't you got anything?" and Ritter said, "No, I don't think you need anything from the looks of you." Then Burris and Grier said,

(Testimony of Henry Ritter.)

"Oh, go on and give us a drink," and Ritter said, "Wait a minute and I will go' and get one. I went to my room and got a bottle." "Before I went out I was standing at the end of the counter, and Church was at the end of the counter, and he moved back." I saw a little money lying on the counter, four or five dollars, dimes, nickels and quarters." "Heinicke's man and Burris were there at the counter and I shoved the money back—it was there between the men. I didn't know who it belonged to, I didn't even know if it belonged to them or not. I said "Nothing doing," and then Harry says, "Well, give us a shot." I says, "I need one anyway," so I went upstairs and got a bottle and treat the boys."

"When I first went into the barroom with the bottle I went behind the bar, and I took the glasses and give the boys a glass apiece, and I took one myself; we drank ours, and I took the glasses and set them on the sink on the drainboard; Then Scott, we was all through drinking when Scott came in; Scott came in and stepped up against the end of the bar there and said, 'Whoo,' so I took a glass, shoved it over to him and [69] took the bottle I had in my hand, and he says, 'Give me the bottle,' and he filled the glass that he had in his hand so the whiskey ran over the counter on his hand, and it made me kind of sore, and I took the towel when he got through drinking and wiped that off, and I looked and see he was hanging on to the bottle with his right hand; and he says, 'Come out here a minute,'

(Testimony of Henry Ritter.)

so he stepped back here halfway in that room, so I went out from behind the bar, and went up past Harry Grier, and Harry says, 'This is for you; your name is on this, I don't know what it is.'

Q. What was it,—a piece of paper?

A. A piece of paper, and I took it, and Scott was begging to me to come out, and I walked over to Scott, and he says, 'You are pinched,' I says, 'What?' He says, 'You are arrested,' and he started to holler, and says, 'Come in, boys, come in, boys,' and Mr. Brown came in from the south of the barroom door, and those other two came in, and this white-haired man, I don't know who he was, he stood there, and they left him in charge of the liquor, his name was mentioned here yesterday, but I never knew his name before, and I think DuBois came in and I think Mr. Nash; I didn't see Carter.

Q. Did you get any money for that drink that you served Grier and the others?

A. I did not, I asked them to take a drink anyway."

Q. You asked them to take a drink? A. Yes.

Q. Did you see any money on the bar after they went out?

A. No, sir; there was no glasses on the bar, and no money either.

Q. You did see the money on the bar when you went upstairs? A. Before I went upstairs.
[70]

That no evidence was introduced and no testimony produced by the Government in the trial of

the case that showed any justification for the use of a decoy and the record discloses no facts that were established that prior to the 8th day of May, 1922, any complaint in reference to possession or sale of liquor had been lodged with the prohibition department, or that the prohibition department had any knowledge prior to the 8th day of May, 1922, that defendant, Ritter, was selling intoxicating liquors or had possession of intoxicating liquors at Bowers Mansion.

BE IT FURTHER REMEMBERED that the Court gave to the jury the following instructions:

Instructions of Court to the Jury.

“THE COURT.—Gentlemen, the indictment charges in the first count, that on or about the 10th day of May, 1922, in Washoe County, State of Nevada, these defendants wilfully and knowingly had in their possession intoxicating liquor. In the second count it alleges that on or about the 8th day of May, they sold intoxicating liquor. You will notice that the allegation is not that the sale took place on the 8th day, or that the possession was on the 10th day; but the allegation is that the possession was on or about the 10th day, and that the sale took place on or about the 8th; so it is not necessary that the Government should prove that the sale took place on the 8th; it is only necessary that it should prove that the whiskey was sold on or about that time, and before the finding of the indictment. And the same with reference to the possession. If they were found to have been in possession on that day, or about that day, and prior to the finding of

(Testimony of Henry Ritter.)

so he stepped back here halfway in that room, so I went out from behind the bar, and went up past Harry Grier, and Harry says, 'This is for you; your name is on this, I don't know what it is.'

Q. What was it,—a piece of paper?

A. A piece of paper, and I took it, and Scott was begging to me to come out, and I walked over to Scott, and he says, 'You are pinched,' I says, 'What?' He says, 'You are arrested,' and he started to holler, and says, 'Come in, boys, come in, boys,' and Mr. Brown came in from the south of the barroom door, and those other two came in, and this white-haired man, I don't know who he was, he stood there, and they left him in charge of the liquor, his name was mentioned here yesterday, but I never knew his name before, and I think DuBois came in and I think Mr. Nash; I didn't see Carter.

Q. Did you get any money for that drink that you served Grier and the others?

A. I did not, I asked them to take a drink anyway."

Q. You asked them to take a drink? A. Yes.

Q. Did you see any money on the bar after they went out?

A. No, sir; there was no glasses on the bar, and no money either.

Q. You did see the money on the bar when you went upstairs? A. Before I went upstairs.

[70]

That no evidence was introduced and no testimony produced by the Government in the trial of

the case that showed any justification for the use of a decoy and the record discloses no facts that were established that prior to the 8th day of May, 1922, any complaint in reference to possession or sale of liquor had been lodged with the prohibition department, or that the prohibition department had any knowledge prior to the 8th day of May, 1922, that defendant, Ritter, was selling intoxicating liquors or had possession of intoxicating liquors at Bowers Mansion.

BE IT FURTHER REMEMBERED that the Court gave to the jury the following instructions:

Instructions of Court to the Jury.

“THE COURT.—Gentlemen, the indictment charges in the first count, that on or about the 10th day of May, 1922, in Washoe County, State of Nevada, these defendants wilfully and knowingly had in their possession intoxicating liquor. In the second count it alleges that on or about the 8th day of May, they sold intoxicating liquor. You will notice that the allegation is not that the sale took place on the 8th day, or that the possession was on the 10th day; but the allegation is that the possession was on or about the 10th day, and that the sale took place on or about the 8th; so it is not necessary that the Government should prove that the sale took place on the 8th; it is only necessary that it should prove that the whiskey was sold on or about that time, and before the finding of the indictment. And the same with reference to the possession. If they were found to have been in possession on that day, or about that day, and prior to the finding of

this indictment, they would be guilty of the offense, provided it is found in the manner that I indicate later.

Section 3 of Title II of the National Prohibition Act declares that 'No person shall on or after the date when the Eighteenth Amendment to the Constitution of the United States goes into effect,' possess or sell intoxicating liquor, except as it is authorized in this Act. The Act defines what intoxicating liquor is in the first section of Title II. That I will read also:

'When used in Title II and Title III of this Act the word "liquor" or the phrase "intoxicating liquor" shall be construed to include alcohol, brandy, whiskey, rum, gin, beer, ale, porter, and wine, and in addition thereto any spirituous, vinous, malt, or fermented liquor, liquids, and compounds, whether medicated, proprietary, patented, or not, and by whatever name, called, containing one-half of one per centum or more of alcohol by volume which are fit for use [71] for beverage purposes.'

We speak of a thing as a beverage which is taken and which we drink for the pleasure of drinking. It don't mean that it is wholesome to drink; it don't mean it is a wise thing to drink it; but if we drink it for the pleasure of drinking it, it is a beverage. It does not make any difference how good or how poor the intoxicating liquor is, if one drinks it for the pleasure of drinking it, and if it contains one-half of one percentum or more of alcohol by volume, it is prohibited by the statute.

It does not make any difference whether it is bonded goods, whether it is the best whiskey that was ever made, or the poorest, if it comes within this definition it is prohibited.

The possession of intoxicating liquor, as I have read you is prohibited by the statute. The possession must be a conscious possession. If a man has intoxicating liquor in a soft-drink place, and he knows he has it, he has violated the law, because there is nothing in the Prohibition Act which permits a man to have possession of intoxicating liquor in a soft-drink place, nothing that has ever been called to my attention.

The sale of intoxicating liquor of course carries with it the ordinary meaning of the term sale. No one shall sell intoxicating liquor; and the possession of intoxicating liquor we must assume as a rule existed, otherwise there could not be a sale. A man in a soft-drink place cannot sell any whisky in that soft-drink place if he has no whisky; so it would be very unwise to find a man guilty of selling intoxicating liquor at a certain time and at a certain place, and then to find that he had not liquor to sell. That is something that you must bear in mind as you go through this case.

The statute which I have read is known as the National Prohibition Act. It has been adopted by Congress, and it is based on a constitutional amendment. It is now the law of the land; and whether it is a good law or whether it is a bad law, whether it should have been passed, or whether it should not have been passed, or whether it should

be different from what it is *it* no concern of ours; we are here as jurors and members of this court, we are here to do our duty, and we are bound to try this case not according to the law we think it ought to be, but according to the law as it is, and according to the evidence, and a true verdict, render according to the law and the evidence.

You are bound to accept the law as I give it to you. That is the rule. You cannot speculate as to what the law is; you cannot follow your own conclusions as to what the law is, or what the law ought to be; you must accept it as given to you by the Court, and if you fail to follow it you are not marching up to the standard of duty prescribed for jurors in this court, or in any other court in this state. [72]

You are called upon, however, to pass on the facts. You are to remember that is your peculiar province. You are to consider the evidence which has been given upon the witness-stand; you cannot go beyond that evidence for your facts; you cannot indulge in any surmises, except as they are based upon that evidence. You are not to follow what the Court may say as to this testimony, or as to what it proves; neither are you to follow what the lawyers may have said in their argument. You are the final arbiters of what is proven by the evidence, and if you follow an expression of mine with reference to what is proven by this evidence simply because I make it, if it does not coincide with your own judgment you are not doing your duty. In other words, you must submit every question of fact

which has appeared in this case and which has been testified to, to your own judgment, under the law as it is given by the Court.

Each defendant is entitled in this case, as in every other, to the presumption that he is innocent until his guilt is proven beyond a reasonable doubt. This does not mean that his guilt must be proven beyond any doubt, or beyond every doubt; it is simply that it must be proven beyond a reasonable doubt. There is nothing absolutely certain in this world. In weighing this testimony you are supposed to weigh it as you would if it were an important matter in your own affairs. You will consider the probabilities; you will consider the truthfulness or the untruthfulness of the witnesses, the manner in which they give their testimony, whether they give it frankly, openly and willingly, and without any apparent evasion or attempt to escape from the consequences of an offense, if they have committed one, and whether they are actuated by a desire to tell the truth, the whole truth, and nothing but the truth.

Each witness who comes upon the witness-stand is subject to your scrutiny. You are to examine his testimony; you are to consider his motives, if any are disclosed; and you are to consider also how his testimony is contradicted, if it is contradicted, by the testimony of other witnesses in this case. That occurs in nearly every case, and it becomes your duty to weigh the testimony, and weigh it carefully to determine where the truth lies. If the witness has merely made a mistake that will

warrant you in being more careful in considering his testimony, and in determining whether his statements are correct or not; but if a witness has deliberately stated that which is untrue as to a material fact in the case, then you are at liberty to disregard the whole of his testimony except where it is corroborated by other credible evidence in the case.

There has been some testimony offered here as to good character. It is your duty to consider it, and weigh it with all other testimony in the case; and if the testimony as to good character, in connection with the other testimony in the case convinces you that the defendants have not been proven guilty beyond a reasonable doubt, it will be your duty to bring in a verdict of acquittal. On the other hand, if notwithstanding the evidence as to good character, you are convinced [73] that the defendants have violated the law, and you are so convinced by the testimony beyond a reasonable doubt, it is your duty to bring in a verdict of guilty.

It is wrong, and it is a violation of the law, for the purest, the best and the most upright man in the land to sell intoxicating liquor. It would be a violation of the law for the Governor of this state to have intoxicating liquor in a soft-drink place. It is immaterial how good a man's character is if he violates the law, and if you are convinced beyond a reasonable doubt that he has done so, it is your duty to bring in a verdict in accordance therewith.

There has been considerable said about an entrapment. Much of what has been said is worthy of

consideration. This great Government of ours is not engaged in the business of manufacturing criminals; it has enough to do to prevent crime. It is not expected to induce men to commit crime in order that they may be convicted and punished. It is unfortunate, however, that men do commit crime. It is unfortunate that this law is violated as frequently as it is. The fact that law is violated renders it necessary to have courts and juries, and to have officers and prohibition enforcement officers. The fact that a man is employed by the Government to suppress the traffic in intoxicating liquor is not a fact from which you are entitled to conclude that he cannot be mistaken, or, on the other hand, that he is unworthy of belief. You are to weigh his testimony just as you do the testimony of every other witness. If he seems to be swayed by improper motives, you are to consider such motives. You are entitled to remember with reference to the defendants themselves, that they are deeply interested in this case, and its outcome.

As I have said before, the Government is not engaged in manufacturing criminals, but it does become necessary for detectives, and the prohibition officers, to match their wits against the wits of the man who is deliberately, persistently, or frequently violating the law, or who has violated the law. Crime is not committed on the housetops, nor in the streets, as a rule; it is committed under such circumstances that the officers are not supposed to see it, and the public is not expected to witness it. But the decoy and the entrapment must be fair. I will

illustrate this by a case which occurred in Montana some years ago. An officer of the Government induced a Mexican, who looked very much like an Indian, to go into a saloon and purchase whiskey. The whiskey was sold, the saloon-keeper arrested, indicted, tried and convicted. The Court held that it was not a fair decoy, because the saloon-keeper did not know he was violating the law when he sold the whiskey to the Indian. It was a trap. The Indian appeared to be a Mexican, and the saloon-keeper had no reason to believe he was violating the law when he sold the whiskey to the Indian.

There is another case known as the Woo Wai case, which has been cited frequently. In that case a Chinaman [74] of some standing in Southern California was approached by a Government officer, who told him there was a great deal of money to be made in smuggling Chinamen across the international line from Mexico; the officer introduced the Chinaman to some of the revenue officers and explained the manner in which it could be done; Woo Wai said that will be violating the law, and the officer said to him, 'I will be there to assist you, these officers will be there, and you will not be arrested.' Thus they induced the Chinaman to engage in the business of smuggling Chinese across the line. He was promptly arrested the first time he committed an offense of that kind. He was tried, but the Court held a conviction under those circumstances could not stand.

The idea of the law is, however, that a man who is engaged in unlawful business may have an oppor-

tunity, and the Government officers may afford him an opportunity to commit a crime. If a Government officer goes into a place, asks for a drink of whiskey and it is given to him at his solicitation, convictions based on such evidence are frequently sustained.

These are merely illustrations. You are to remember that it is for you to determine from the evidence, and after a consideration of all of it, whether this was a fair decoy or not. And in considering whether it was fair, you are to consider all the surroundings; you will consider the fact that it occurred in a soft-drink place, you will consider the fact that the liquor was served in a certain kind of glasses; that a bottle was brought from a place outside the room, outside the soft-drink place; you will consider the quantity of whiskey found there subsequently or found on the 10th of May. You will consider the fact also *that was* a funnel with the bottles; and you will consider not only the whiskey found in those bottles, but you will consider and give such effect to the other testimony with reference to other bottles and jugs of the same kind which were found there, as you think proper.

There can be no question but that some one has violated the law. One of the defendants admits that he had this whiskey in his room. He had the two jugs. There is nothing I can see in that matter which is otherwise than a violation of the law.

There is conflicting testimony as to whether sales were made; but it is for you to weigh all of the testimony, and to determine therefrom whether

these defendants, or either or both of them, did sell whiskey at that time, or on or about the time alleged in this indictment.

There is quite a bit of testimony as to the amount of solicitation used to induce Mr. Ritter to give this whiskey, if he did give it; and about that there is a dispute in the testimony. You probably recollect the testimony of Mr. Scott, as to just what did occur, and what he asked and what he said; and you will also remember just what occurred when the three witnesses, Burris, Swearingen and Grier were there, their testimony and what efforts they used to procure the whiskey. You [75] will determine from that whether this was a voluntary sale made willingly, and made for the money which was involved in it, or whether defendants were the innocent victims of the officers who were designing to betray them to their harm."

Whereupon the jury retired and brought in a verdict finding the defendant, Henry Ritter, guilty as charged in the indictment.

The defendant thereupon moved the Court to set aside the verdict and grant a new trial for the following reasons:

I.

That the Court erred in its decision upon questions of law arising during the course of the trial.

II.

That the Court erred in refusing to give the jury the instruction requested by the defendant in reference to the use of a decoy.

III.

That the verdict of the jury is contrary to law.

IV.

That under the testimony admitted to sustain the second count of the indictment the verdict should be set aside for the reason that the defendant, Ritter, was entrapped and persuaded by Government agents to commit the act which the jury found him guilty.

V.

That the verdict of the jury is contrary to the evidence.

But the Court overruled the motion, to which ruling the defendant then and there duly excepted.

The defendant, by his counsel, thereupon moved the Court to arrest the judgment for the following reasons: [76]

I.

Because the bill of indictment in this cause, and the first count of said indictment, wherein defendant is sought to be charged with unlawful possession of intoxicating liquor, is insufficient to support any judgment against him in this, to wit:

The indictment does not recite facts on said first count sufficient to constitute a public offense for the reason that possession is charged in Washoe County, Nevada, no place therein being designated and no averments or allegations are contained in said indictment which negatives the assumptions of fact, that said liquor charged to be in the possession of defendant may have been possessed by him in his private dwelling; the allegations in said indict-

ment that said possession was unlawful and in violation of the prohibition law is the statement of a conclusion.

II.

Because the bill of indictment under the second count is insufficient to support any judgment against defendant in this, to wit:

Said second count attempts to charge an alleged sale of intoxicating liquor in that defendant in violation of law did unlawfully sell intoxicating liquor fit for use as a beverage; the said allegations are insufficient in that there is no allegation or statement that said liquor so alleged to have been sold, was sold with the knowledge on the part of the seller (the defendant); that it was to be used for beverage purposes, or that the liquor so sold was used for beverage purposes.

In support of these two counts, the Court is respectfully referred to the testimony given in the case and [77] to the objections interposed by defendant at the outset of the trial, wherein counsel for defendant objected to the introduction of any evidence to support the allegations of the indictment, for the reason that the indictment failed to state facts sufficient to constitute a public offense, and therefore all testimony in support of the indictment was irrelevant, incompetent and immaterial.

III.

That the evidence introduced established that the defendant, Ritter, had been entrapped by prohibition officers into the commission of the alleged crime

charged in the second count of the indictment, and under which the jury found the defendant guilty.

But the Court overruled the motion, to which ruling of the Court the defendant, by his counsel, then and there duly excepted.

Thereupon the Court entered judgment upon the verdict and sentenced the defendant in the county jail of Washoe County, State of Nevada, for a period of four months, to which ruling and judgment of the Court the defendant, by his counsel, then and there duly excepted.

This is to certify that the foregoing bill of exceptions tendered by the defendant with the plaintiff's amendments is correct in every particular, is hereby settled and allowed and made a part of the record in this cause.

Done in open court this 31st day of March, A. D. 1923.

E. S. FARRINGTON,
United States District Judge. [78]

[Endorsed]: No. 5593. In the District Court of the United States of America in and for the District of Nevada. United States of America, Plaintiff, vs. Henry Ritter and D. Church, Defendants. Bill of Exceptions. Filed March 31, 1923. E. O. Patterson, Clerk. [79]

In the District Court of the United States for the
District of Nevada.

No. 5593.

UNITED STATES OF AMERICA

vs.

HENRY RITTER and D. CHURCH.

**Certificate of Clerk U. S. District Court to Trans-
script of Record.**

United States of America,
District of Nevada,—ss.

I, E. O. Patterson, Clerk of the District Court of the United States for the District of Nevada, do hereby certify that I am custodian of the records, papers and files of the said United States District Court for the District of Nevada, including the records, papers and files in the case of United States of America, Plaintiff, vs. Henry Ritter and D. Church, Defendants, said case being No. 5593 on the docket of said court.

I further certify that the attached transcript, consisting of 81 typewritten pages numbered from 1 to 81, inclusive, contains a full, true and correct transcript of the proceedings in said case and of all papers filed therein together with the endorsements of filing thereon, as set forth in the praecipe filed in said case and made a part of the transcript attached hereto, as the same appears from the originals of record and on file in my office as such

clerk in the City of Carson, State and District aforesaid.

I further certify that the cost for preparing and certifying to said record, amounting to \$34.70, has been paid to me by Messrs. Boyd & Curler, attorneys for the defendant Henry Ritter in the above-entitled cause. [80]

And I further certify that the original writ of error and the original citation, issued in this cause, are hereto attached.

WITNESS my hand and the seal of said United States District Court this 31st day of March, A. D. 1923.

[Seal] E. O. PATTERSON,
Clerk, U. S. District Court, District of Nevada.
[81]

In the District Court of the United States, in and
for the District of Nevada.

UNITED STATES OF AMERICA,
Plaintiff,
vs.
HENRY RITTER and D. CHURCH,
Defendants.

Writ of Error.

United States of America,—ss.

The President of the United States, to the Honorable the Judge of the District Court of the United States of America, in and for the District of Nevada, GREETING:

Because in the record and proceedings, as also in the rendition of the judgment of a plea is in the said District Court before you, or some of you, wherein the United States is plaintiff and Henry Ritter is one of the defendants, a manifest error hath happened, to the great damage of the said Henry Ritter as by the indictment in said cause and the record of proceedings therein appears. We being willing that error, if any hath been, should be duly corrected, and full and speedy justice done to the parties aforesaid in this behalf, do command you, if judgment be therein given, that then under your seal, distinctly and openly, you send the record and proceedings aforesaid, with all things concerning the same, to the United States Circuit Court of Appeals for the Ninth Circuit, at San Francisco, California, together with this writ, so that you have the same in the said United States Circuit Court of Appeals at San Francisco, California, within 30 days from the date hereof, that the record and proceedings aforesaid being inspected, the said [82] United States Circuit Court of Appeals may cause further to be done therein to correct that error what of right and according to the laws and customs of the United States should be done.

WITNESS the Honorable WILLIAM H. TAFT, Chief Justice of the Supreme Court of the United States of America, the 19th day of February, A. D. 1923.

[Seal] E. O. PATTERSON,
Clerk of the District Court of the United States for
the District of Nevada.

Allowed.

E. S. FARRINGTON,

Judge of the District Court of the United States for
the District of Nevada. [83]

[Endorsed]: No. 5593. In the District Court of
the United States in and for the District of Nevada.
United States of America, Plaintiff, vs. Henry
Ritter and D. Church, Defendants. Writ of Error.
Filed Feb. 19, 1923. E. O. Patterson, Clerk. [84]

In the District Court of the United States, in and
for the District of Nevada.

UNITED STATES OF AMERICA,

Plaintiff,

vs.

HENRY RITTER and D. CHURCH,

Defendants.

Citation.

The President of the United States to the United
States of America, GREETING:

To the United States of America:

You are hereby cited and admonished to be and
appear at the United States Circuit Court of Ap-
peals for the Ninth Circuit, at the City of San
Francisco, State of California, within thirty days
from the date of this writ, pursuant to the writ of
error duly allowed by the District Court of the
United States, in and for the District of Nevada,
and filed in the clerk's office of said court on the

19th day of February, 1923, in a cause wherein Henry Ritter is appellant and you appellee, to show cause, if any, why the judgment and decree rendered against the said appellant as in said writ of error mentioned should not be corrected, and why speedy justice should not be done to the party in that behalf.

WITNESS the Honorable E. S. FARRINGTON, Judge of the District Court of the United States, in and for the District of Nevada, this 19th day of February, A. D. 1923, and of the Independence of the United States the one hundred and forty-seventh.

E. S. FARRINGTON,
District Judge.

[Seal] Attest: E. O. PATTERSON,
Clerk. [85]

Service of the within citation and receipt of a copy is hereby admitted this 19th day of February, A. D. 1923.

GEORGE SPRINGMEYER,
United States Attorney, District of Nevada.

[86]

[Endorsed]: No. 5593. In the District Court of the United States for the District of Nevada. United States of America, Plaintiff, vs. Henry Ritter and D. Church, Defendants. Citation. Filed Feb. 19, 1923. E. O. Patterson, Clerk. [87]

[Endorsed]: No. 4004. United States Circuit Court of Appeals for the Ninth Circuit. Henry Ritter, Plaintiff in Error, vs. The United States of America, Defendant in Error. Transcript of Record. Upon Writ of Error to the United States District Court of the District of Nevada.

Filed April 5, 1923.

F. D. MONCKTON,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.

By Paul P. O'Brien,
Deputy Clerk.

